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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-sixth of the series, has been prepared by the Codification Division of the Office of Legal Affairs.

Chapters I and II contain legislative texts and 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 2008.

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, advisory opinions and selected decisions rendered by international tribunals in 2008.

In chapter VIII are found decisions given in 2008 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 2008.

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

ACABQ	Advisory Committee on Administrative and Budgetary Questions (United Nations)
AGICOA	WIPO Expedited Arbitration Rules for the Association for the International Collective Management of Audiovisual Works
ALU	Administrative Law Unit (United Nations)
AMIS	African Union Mission in the Sudan
AMISOM	African Union Mission in Somalia
APB	Appointment and Promotion Board (United Nations)
APFIC	Asia-Pacific Fishery Commission
AU	African Union
BINUB	United Nations Integrated Office in Burundi
BONUCA	United Nations Peacebuilding Support Office in the Central African Republic
BWC	Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction
CARICOM	Caribbean Community
CCW	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
CEN-SAD	Community of Sahel-Saharan States
CESAIR	Commission of Experts of the Supervisory Authority of the International Registry (ICAO)
CICIG	International Commission against Impunity in Guatemala
CLC	International Convention on Civil Liability for Oil Pollution Damage
CLCS	Commission on the Limits of the Continental Shelf
CMR	Convention on the Contract for the International Carriage of Goods by Road
CNS	Convention on Nuclear Safety
COMIFAC	Central African Forest Commission
COREP	Regional Fisheries Committee for the Gulf of Guinea
CTBT	Comprehensive Nuclear-Test-Ban Treaty
CTBTO	Comprehensive Nuclear-Test-Ban Treaty Organization

CTED	Counter-Terrorism Committee Executive Directorate (United Nations)
CWC	Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction
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)
EC	European Community
ECA	Economic Commission for Africa
ECCC	Extraordinary Chambers in the Courts of Cambodia
ECHR	European Court of Human Rights
ECLAC	Economic Commission for Latin America and the Caribbean
ECO	Economic Cooperation Organization
ECOWAS	Economic Community of West African States
EOSG	Executive Office of the Secretary-General
EPO	European Patent Organization
ESCAP	United Nations Economic and Social Commission for Asia and the Pacific
EU	European Union
EUFOR	European Union Force
Euratom	European Atomic Energy Community
Eurocontrol	European Organization for the Safety of Air Navigation
FAO	Food and Agriculture Organization of the United Nations
FOMUC	Multinational Force in the Central African Republic
GGE	Group of Governmental Experts
GNSS	Global Navigation Satellite Systems
HCC	Headquarters Committee on Contracts (United Nations)

HNS	International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996
HRC	Human Rights Council
HRMD	Human Resources Management Department (WIPO)
HRMS	Human Resource Management Section (United Nations)
IAEA	International Atomic Energy Agency
IBRD	International Bank for Reconstruction and Development
ICAO	International Civil Aviation Organization
ICC	International Criminal Court
ICJ	International Court of Justice
ICS	International Chamber of Shipping
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
IHR	International Health Regulations (WHO)
ILO	International Labour Organization
IMF	International Monetary Fund
IMFAT	International Monetary Fund Administrative Tribunal
IMLI	International Maritime Law Institute
IMO	International Maritime Organization
IMS	Investment Management Service (UNJSPF)
INGOs	International non-governmental organizations
INLEX	International Expert Group on Nuclear Liability (IAEA)
INSTRAW	United Nations Research and Training Institute for the Advancement of Women
INTERPOL	International Criminal Police Organization
IOC	Intergovernmental Oceanographic Commission (UNESCO)
IOOC	International Olive Oil Council
ISA	International Seabed Authority
ISO	International Organization for Standardization
ITC	International Trade Center

ITLOS	International Tribunal for the Law of the Sea
ITSD	Information Technology Services Division (United Nations)
ITU	International Telecommunications Union
IUCN	International Union for Conservation of Nature
KFOR	Kosovo Force (North Atlantic Treaty Organization)
LDCs	Least Developed Countries
MEPC	Marine Environment Protection Committee
MERCOSUR	Common Market of the South
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
MRG	Management Review Group (UNDP)
MSC	Maritime Safety Committee (IMO)
NATO	North Atlantic Treaty Organisation
NGO	Non-governmental organization
NPT	Treaty on Non-Proliferation of Nuclear Weapons
OAPI	African Intellectual Property Organization
OAS	Organization of American States
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)
PCT	Patent Cooperation Treaty
PD	Procurement Division (United Nations)
PS	Procurement Service (United Nations)

RCDP	United Nations Regional Centre for Peace and Disarmament for Asia and the Pacific
SBAA	Standard Basic Assistance Agreement (UNDP)
SCCR	Standing Committee on Copyright and Related Rights (WIPO)
SCP	Standing Committee on the Law of Patents (WIPO)
SCT	Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications (WIPO)
SCSL	Special Court for Sierra Leone
SEAFDEC	Southeast Asian Fisheries Development Center
SFOR	Stabilization Force (Bosnia and Herzegovina)
SICA	Central American Integration System
SOFA	Status-of-forces agreement
SOLAS	International Convention for the Safety of Life at Sea
SRSG	Special Representative of the Secretary-General (United Nations)
SSS	Security and Safety Section (UNOG)
STL	Special Tribunal for Lebanon
TCC	Technical Cooperation Committee (IMO)
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
UNCLOS	United Nations Convention on the Law of the Sea
UNCTAD	United Nations Conference on Trade and Development
UNDC	United Nations Disarmament Commission
UNDOF	United Nations Disengagement Observer Force
UNDP	United Nations Development Programme
UNECE	United Nations Economic Commission for Europe
UNEP	United Nations Environmental Programme
UNESCAP	United Nations Economic and Social Commission for Asia and the Pacific
UNESCO	United Nations Educational, Scientific and Cultural Organization

UNESCO-ITC	Centre for Integrated Surveys
UNFCU	United Nations Federal Credit Union
UNFICYP	United Nations Peacekeeping Force in Cyprus
UNFPA	United Nations Population Fund
UNHCR	Office of the United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund
UNICRI	United Nations Interregional Crime and Justice Research Institute
UNIDIR	United Nations Institute for Disarmament Research
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
UNITAR	United Nations Institute for Training and Research
UNJSPF	United Nations Joint Staff Pension Fund
UN-LiREC	United Nations Regional Centre for Peace, Disarmament and Development in Latin America and the Caribbean
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
UNOV	United Nations Office at Vienna
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
UNRISD	United Nations Research Institute for Social Development
UNRWA	United Nations Relief and Works Agency for Palestine Refugees in the Near East
UNSCO	United Nations Special Coordinator for the Middle East Peace Process
UNSSCA	United Nations Staff Savings & Credit Association
UNTOP	United Nations Tajikistan Office of Peacebuilding
UNTSO	United Nations Truce Supervision Organization
UNV	United Nations Volunteers
UPU	Universal Postal Union
USG	Under-Secretary-General (United Nations)
VRC	Vendor Review Committee (United Nations)
WFP	World Food Programme
WHO	World Health Organization
WIPO	World Intellectual Property Organization
WMO	World Meteorological Organization
WMU	World Maritime University
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. Switzerland

1. Federal Act on the Privileges, Immunities and Facilities and the Financial Subsidies granted by Switzerland as a Host State (Host State Act (HSA)) of 22 June 2007*

The Federal Assembly of the Swiss Confederation,

on the basis of Article 54, paragraph 1, of the Federal Constitution,[1] and having considered the Dispatch to Parliament of the Federal Council dated 13 September 2006,[2]

decrees:

Chapter 1. Subject matter

Article 1

1. This Act regulates, in the sphere of host state policy:

(*a*) the granting of privileges, immunities and facilities;

(*b*) the granting of financial subsidies and the provision of other support measures.

2. Privileges, immunities, facilities, and financial subsidies arising under international law or other federal statutes are unaffected.

Chapter 2. Privileges, immunities and facilities

Section 1. Beneficiaries

Article 2

1. The Confederation may grant privileges, facilities and exemptions to the following institutional beneficiaries:

(*a*) intergovernmental organisations;

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* RO 2007 6637. Entered into force on 1 January 2008 (BRB of 7 December 2007—RO 2007 6649). The English text reproduced here is an unofficial translation which is available on the website of the Swiss Confederation (www.admin.ch).

[1] SR 101.

[2] BBl 2006 8017.

(*b*) international institutions;

(*c*) quasi-governmental international organisations;

(*d*) diplomatic missions;

(*e*) consular posts;

(*f*) permanent missions or other representations to intergovernmental organisations;

(*g*) special missions;

(*h*) international conferences;

(*i*) secretariats and other bodies established under an international treaty;

(*j*) independent commissions;

(*k*) international courts;

(*l*) arbitration tribunals;

(*m*) other international bodies.

2. The Confederation may grant privileges, immunities and facilities to the following natural persons ("individual beneficiaries"):

(*a*) individuals who, whether on a permanent or a temporary basis, are called to act in an official capacity at one of the institutional beneficiaries referred to in paragraph 1 above;

(*b*) eminent persons carrying out an international mandate;

(*c*) individuals entitled to accompany one of the individual beneficiaries referred to in letters a or b, including private household employees.

Section 2. Content, scope of application and duration

Article 3. Content

1. The privileges and immunities include:

(*a*) inviolability of the person, premises, property, archives, documents, correspondence and diplomatic bag;

(*b*) immunity from legal proceedings and the enforcement of judgments;

(*c*) exemption from direct taxes;

(*d*) exemption from indirect taxes;

(*e*) exemption from customs duties and other import taxes;

(*f*) freedom to acquire, receive, hold, transfer and convert funds, currencies, cash and other movable property;

(*g*) freedom of communication, movement and travel;

(*h*) exemption from the Swiss social security system;

(*i*) exemption from Swiss entry and residence requirements;

(*j*) exemption from all personal services, from all public service and from all military duties or obligations of any kind.

2. The facilities include:

(*a*) the procedures for access to the employment market for the individual beneficiaries referred to in Article 2, paragraph 2, letters (*a*) and (*c*) above;

(*b*) the right to use a flag and an emblem;

(*c*) the right to issue laissez passer and to have them accepted as travel documents by the Swiss authorities;

(*d*) facilities of registration of vehicles.

3. The Federal Council may accord additional facilities of a more minor nature than those set out in paragraph 2 above.

Article 4. Scope of application

1. The personal and material scope of application of the privileges, immunities and facilities shall be determined case by case in the light of:

(*a*) international law, Switzerland's international obligations, and international practice;

(*b*) **the beneficiary's legal status and the importance of its role in international relations.**

2. Exemption from direct taxes may be granted to all the beneficiaries referred to in Article 2 above. However, in the case of individual beneficiaries within the meaning of Article 2, paragraph 2, who are Swiss nationals, the exemption shall be granted only if the institutional beneficiary to which they are called has adopted an internal tax system of its own, provided that this condition is in accordance with international law.

3. Exemption from indirect taxes may be granted to all beneficiaries referred to in Article 2 above. However, individual beneficiaries within the meaning of Article 2, paragraph 2, shall be exempted from value added tax and mineral oil tax only if they hold diplomatic status.

4. Exemption from customs duties and other import taxes may be granted to all the beneficiaries referred to in Article 2.

5. The Federal Council shall issue regulations on entry into Switzerland, residence and work for the individual beneficiaries referred to in Article 2, paragraph 2, subject to what is permissible under international law.

Article 5. Duration

The duration of privileges, immunities and facilities may be limited.

Section 3. Requirements for granting privileges, immunities and facilities

Article 6. General requirements

An institutional beneficiary may be accorded privileges, immunities and facilities if:

(*a*) it has its headquarters or **a branch in Switzerland or carries out activities in Switzerland;**

(*b*) its purposes are not for profit and are of international utility;

(*c*) its carries out activities in the sphere of international relations; and

(*d*) its presence in Switzerland is of special interest to Switzerland.

Article 7. International institutions

An international institution may be accorded privileges, immunities and facilities if it:

(*a*) has structures similar to those of an intergovernmental organisation;

(*b*) performs functions of a governmental nature or functions typically assigned to an intergovernmental organisation; and

(*c*) **enjoys international recognition in the international legal order, and in particular** under an international treaty, a resolution of an intergovernmental organization or a policy document adopted by a group of States.

Article 8. Quasi-governmental international organizations

A quasi-governmental international organisation may be accorded privileges, immunities and facilities if:

(*a*) a majority of its members are states, organisations governed by public law, or entities performing functions of a governmental nature;

(*b*) it has structures similar to those of an intergovernmental organisation; and

(*c*) it operates in two or more States.

Article 9. International conferences

An international conference may be accorded privileges, immunities and facilities if:

(*a*) **it is convened under the aegis of an intergovernmental organisation, an international** institution, a quasi-governmental international organisation, a secretariat or any other body established by an international treaty, under the aegis of Switzerland or at the initiative of a group of States; and

(*b*) a majority of participants represent States, intergovernmental organisations, international institutions, quasi-governmental international organisations, secretariats or other bodies established by international treaty.

Article 10. Secretariats or other bodies established by international treaty

A secretariat or other body may be accorded privileges, immunities and facilities if it is established under an international treaty which assigns to it certain tasks with a view to the implementation of that treaty.

Article 11. Independent commissions

An independent commission may be accorded privileges, immunities and facilities if:

(*a*) its legitimacy derives from a resolution of an intergovernmental organization or of an international institution, or if it was established by a group of States or by Switzerland;

(*b*) **it enjoys broad political and financial support among the international community;**

(*c*) its mandate is to examine an issue of importance to the international community;

(*d*) its mandate is limited in time; and

(*e*) the granting of privileges, immunities and facilities contributes substantially to the fulfilment of its mandate.

Article 12. International courts

An international court may be accorded privileges, immunities and facilities if it is established under an international treaty or by a resolution of an intergovernmental organisation or of an international institution.

Article 13. Arbitration tribunals

An arbitration tribunal may be accorded privileges, immunities and facilities if:

(*a*) it is established under an arbitration clause in an international treaty or under an agreement between the subjects of international law who are parties to the arbitration; and

(*b*) the parties to the arbitration referred to in letter a above can show a particular need for the arbitration tribunal to sit in Switzerland.

Article 14. Other international bodies

Any other international body may by way of exception be accorded privileges, immunities and facilities if:

(*a*) it works closely with one or more intergovernmental organisations or international institutions based in Switzerland or with States in carrying out tasks which are normally the responsibility of those intergovernmental organisations, international institutions or States;

(*b*) it plays a key role in an important area of international relations;

(*c*) it has wide recognition at the international level; and

(*d*) the granting of privileges, immunities and facilities contributes substantially to the fulfilment of its mandate.

Article 15. Eminent persons carrying out an international mandate

An eminent person carrying out an international mandate may by way of exception be accorded privileges, immunities and facilities if he or she:

(*a*) executes a mandate that is limited in time and conferred by an intergovernmental organisation, an international institution or a group of States;

(*b*) is a foreign national;

(*c*) is resident in Switzerland for the duration of the mandate and was not habitually resident in Switzerland prior to its commencement;

(*d*) does not engage in any gainful activity; and

(*e*) needs to be in Switzerland for the purposes of the mandate.

Chapter 3. Acquisition of land and buildings for official purposes

Article 16. Acquisition of land and buildings

1. Institutional beneficiaries, within the meaning of Article 2, paragraph 1, may acquire land and buildings for the purposes of their official activities. The area of the property concerned must not exceed what is necessary for those purposes.

2. The acquirer must submit an application to the Federal Department of Foreign Affairs ("the Department") and a copy of the same to the relevant authority in the canton concerned.

3. The Department shall consult the relevant authority in the canton concerned and verify that the acquirer is an institutional beneficiary within the meaning of Article 2, paragraph 1, and that the acquisition is for official purposes. It shall then issue a ruling. Approval of the application is conditional on the necessary authorisations, *i.e.,* building permits and safety clearance being obtained from the competent authorities.

4. Entry in the land register of an acquisition of land or buildings within the meaning of paragraph 1 above is conditional on approval having been given in accordance with paragraph 3 above.

Article 17. Definitions

1. The acquisition of land and buildings is understood to be any acquisition of a title to a building, part of a building or a piece of land, a right of habitation or a usufruct to a building or a part thereof, or the acquisition of other rights which confer on the holder equivalent status to that of owner, such as a long-term lease of land or buildings if the terms of such lease go beyond the scope of practice in civil matters.

2. A change of use is deemed an acquisition for these purposes.

3. Land and buildings for official purposes are buildings or parts of buildings together with the curtilage thereof which are used for the purpose of carrying out the official activities of the institutional beneficiary.

Chapter 4. Financial subsidies and other support measures

Article 18. Purposes

The aim of financial subsidies and other support measures is in particular to:

(*a*) facilitate the installation, work, integration and security in Switzerland of the beneficiaries referred to in Article 19;

(*b*) promote the reputation of Switzerland as a host state;

(*c*) further Swiss bids to play host to the beneficiaries referred to in Article 2;

(*d*) promote activities in the area of host state policy.

Article 19. Beneficiaries

Financial subsidies and other support measures may be granted to:

(*a*) the beneficiaries referred to in Article 2;

(*b*) international nongovernmental organizations (Chapter 5);

(*c*) associations and foundations whose activities serve purposes set out in Article 18.

Article 20. Modalities

Financial subsidies and other support measures provided by the Confederation may take the form of:

(*a*) financial subsidies on a one-off or recurring basis;

(*b*) grants to the institutional beneficiaries referred to in Article 2, paragraph 1, either directly or via the Building Foundation for International Organisations (FIPOI) in Geneva, interest-free building loans repayable within 50 years;

(*c*) financial contributions to international conferences in Switzerland;

(*d*) **one-off or recurring subsidies in-kind such as personnel, premises or equipment;**

(*e*) **the creation of associations or foundations governed by private law and participation in such associations or foundations;**

(*f*) **instructions to the relevant police authorities to implement further security measures going beyond those already adopted by Switzerland to meet its security obligations under international law in the Federal Act of 21 March 1997**[3] on Measures to Safeguard Internal Security.

Article 21. Due compensation to the cantons

The Confederation may pay due compensation to the cantons for tasks they carry out under Article 20, letter f, that do not fall within their competence under the Federal Constitution.

Article 22. Finance

The funds necessary to implement this Act will be provided for in the budget. A guarantee credit will be sought in the case of a commitment for which funding extends beyond a single budget year.

Article 23. Conditions, procedures and detailed rules

The Federal Council shall lay down the conditions, procedures and detailed rules for the granting of financial subsidies and other support measures.

Chapter 5. International non-governmental organisations

Article 24. Principles

1. International non-governmental organizations (INGOs) may establish themselves in Switzerland in accordance with Swiss law.

[3] SR 120.

2. The Confederation may facilitate the establishment or the activities of an INGO in Switzerland subject to the applicable law. It may accord an INGO the financial subsidies and other support measures provided for under this Act.

3. INGOs may be entitled to benefits provided for under other federal acts, in particular the tax exemption provided for under the Federal Act of 14 December 1990 on Direct Federal Taxation[4] and the simplified procedures for the hiring of foreign personnel provided for under Swiss legislation.

4. INGOs are not eligible for the privileges, immunities and facilities contemplated by this Act.

Article 25. Definition

An INGO, for the purposes of this Act, is an organisation:

(*a*) with the legal form of an association or a foundation formed in accordance with Swiss law;

(*b*) whose members are natural persons of different nationalities or legal persons formed in accordance with the national laws of different States;

(*c*) which is genuinely active in several States;

(*d*) whose objectives are charitable or in the public interest within the meaning of Article 56, letter g, of the Federal Act of 14 December 1990[5] on Direct Federal Taxation;

(*e*) which operates in conjunction with an intergovernmental organisation or international institution, for example by having observer status at such organization or institution; and

(*f*) whose presence in Switzerland is of special interest to Switzerland.

Chapter 6. Powers

Article 26. Granting of privileges, immunities and facilities and of financial subsidies and other support measures

1. The Federal Council shall:

(*a*) grant privileges, immunities and facilities;

(*b*) grant the financial subsidies and adopt the other support measures within the limit of the relevant budget appropriations.

2. The Federal Council may conclude enter into international treaties concerning:

(*a*) the granting of privileges, immunities and facilities;

(*b*) the tax treatment of beneficiaries within the meaning of Article 2;

(*c*) the status of Swiss employees of institutional beneficiaries within the meaning of Article 2, paragraph 1, for the purposes of Swiss social insurance;

(*d*) the granting of financial subsidies and other support measures, subject to the budgetary prerogative of the Federal Assembly;

[4] SR 642.11.

[5] SR 642.11.

(*e*) cooperation with neighbouring States in the area of host state policy.

3. The Federal Council may delegate to the Department the power:

(*a*) to grant privileges, immunities and facilities of limited duration;

(*b*) to grant financial subsidies of limited duration, to fund international conferences in Switzerland and to provide subsidies in-kind of limited duration in accordance with Article 20;

(*c*) to instruct the relevant police authorities to implement further security measures in accordance with Article 20, letter (f).

Article 27. Terms of employment of individual beneficiaries

1. The Federal Council may issue standard contracts of employment or otherwise regulate the conditions of employment in Switzerland of the individual beneficiaries referred to in Article 2, paragraph 2, insofar as permissible under international law. It may, in particular, set minimum wages.

2. The Federal Council shall, in particular, lay down the basic pay and working conditions of the private household employees referred to in Article 2, paragraph 2, as well as the social security arrangements for such employees in the event of illness, accident, invalidity or unemployment, insofar as permissible under international law.

Article 28. Settlement of private-law disputes in cases of immunity from legal and enforcement proceedings

When entering into a headquarters agreement with an institutional beneficiary within the meaning of Article 2, paragraph 1, the Federal Council shall ensure that the beneficiary adopt appropriate measures with a view to the satisfactory settlement of:

(*a*) disputes arising out of contracts to which the institutional beneficiary may be a party and of other private-law disputes;

(*b*) disputes involving staff of the institutional beneficiary who enjoy immunity by reason of their official capacity, unless that immunity is waived.

Article 29. Participation of the cantons

1. Before entering into any agreement to grant privileges, immunities and facilities for a duration of not less than one year or unlimited in time, the Federal Council shall consult with the canton in which the beneficiary is based and with the neighbouring cantons.

2. If the privileges, immunities and facilities entail any exception to the tax law of the canton in which the beneficiary is based, the Federal Council's decision shall be taken in consultation with the canton in question.

3. The cantons shall participate, within the meaning of the Federal Act of 22 December 1999[6] on the Participation of the Cantons in the Foreign Policy of the Confederation, in the negotiation of international treaties in the area of host state policy.

[6] SR 138.1.

Article 30. Information

The Department may provide information to anybody demonstrating a particular interest in:

(*a*) the nature and extent of the privileges, immunities and facilities accorded, and the beneficiaries thereof;

(*b*) **the financial subsidies and other support measures accorded and the beneficiaries thereof.**

Article 31. Compliance with the terms of the privileges, immunities and facilities

1. The Federal Council shall monitor compliance with the terms of the privileges, immunities and facilities granted and shall take the measures necessary if it finds instances of abuse. It may, where appropriate, rescind the relevant agreements or revoke the privileges, immunities and facilities granted.

2. The Federal Council may delegate to the Department the power to revoke the privileges, immunities and facilities granted to an individual beneficiary.

Article 32. Suspension, withdrawal and recovery of financial subsidies and other support measures

The Federal Council or, if within its remit, the Department, may suspend or withdraw financial subsidies and other support measures or demand the full or partial reimbursement of subsidies already provided, if the beneficiary, despite having been issued a notice to comply, fails to fulfil its tasks as foreseen or only partly fulfils its tasks.

Chapter 7. Final provisions

Article 33. Implementing provisions

1. The Federal Council shall enact the implementing provisions.

2. It may implement the present Act in association with the cantons or private legal entities.

3. It may delegate administrative responsibilities in the area of host state policy to private legal entities.

Article 34. Repeal and amendment of current law

The repeal and amendment of the current law is covered in the Annex.[*]

Article 35. Coordination of this law with the Foreign Nationals Act of 16 December 2005 (FNA)[7]

On the commencement of this Act or of the FNA, whichever is later, or on the simultaneous commencement of both, Chapter II number 2 of the Annex to this Act will become redundant and Article 98, paragraph 2, FNA is worded as follows:

[*] Not reproduced herein.

[7] SR 142.20. This amendment is inserted in the said Federal Act.

Article 98.2

. . .

Article 36. Referendum and commencement

1. This Act is subject to an optional referendum.
2. The Federal Council shall determine the commencement date.

2. Ordinance to the Federal Act on the Privileges, Immunities and Facilities and the Financial Subsidies granted by Switzerland as a Host State (Host State Ordinance (HSO)) of 7 December 2007*

The Swiss Federal Council,

on the basis of Article 33 of the Host State Act of 22 June 2007[1] ('HSA'),

decrees:

Chapter 1. Subject matter and definitions

Article 1. Subject matter

1. This Ordinance lays down the implementing rules for the HSA. It determines in particular:

(*a*) the scope of the privileges, immunities and facilities which may be granted to the different types of institutional beneficiary concerned;

(*b*) the conditions of entry, residence and work on Swiss territory for individual beneficiaries;

(*c*) the procedure for the acquisition of land and buildings by institutional beneficiaries;

(*d*) the rules governing the granting of financial subsidies and other support measures.

2. The conditions of entry, residence and work for private household employees are laid down in a separate ordinance.

Article 2. Meaning of permanent mission or other representation to intergovernmental organisations

A permanent mission or other representation to intergovernmental organizations means in particular:

(*a*) the permanent missions to the United Nations Office or to other intergovernmental organisations, including the permanent missions to the World Trade Organization;

(*b*) the permanent representations to the Conference on Disarmament;

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* RO 2001 6657. Entered into force on 1 January 2008. The English text reproduced here is an unofficial translation which is available on the website of the Swiss Confederation (www.admin.ch).

[1] SR 192.12.

(*c*) the permanent delegations of intergovernmental organisations at intergovernmental organisations;

(*d*) observer bureaux.

Article 3. Meaning of special mission

A special mission within the meaning of the Convention of 8 December 1969[2] on Special Missions includes:

(*a*) temporary missions composed of representatives of a State sent to Switzerland in accordance with Article 2 of the Convention of 8 December 1969 on Special Missions;

(*b*) temporary missions composed of representatives of States in connection with meetings between two or more States in accordance with Article 18 of the Convention of 8 December 1969 on Special Missions;

(*c*) temporary missions composed of representatives of a State and of non-State representatives in connection with the exercise of Swiss good offices.

Article 4. Meaning of principal individual beneficiary

A principal individual beneficiary is an individual beneficiary as referred to in Article 2, paragraph 2, letters (a) and (b), HSA.

Article 5. Meaning of members of local staff

Members of local staff are persons employed by a State to perform official duties within the meaning of the Vienna Convention of 18 April 1961[3] on Diplomatic Relations, the Vienna Convention of 24 April 1963[4] on Consular Relations, or the Convention of 8 December 1969[5] on Special Missions, but who do not form part of the transferable staff of the sending State. These persons may be nationals of the sending State or of another State. They generally perform the duties of service staff within the meaning of the aforementioned Conventions but may also perform other duties referred to in those Conventions.

Chapter 2. Scope of privileges, immunities and facilities

Section I. Institutional beneficiaries

Article 6. General provisions

1. The following institutional beneficiaries are accorded all of the privileges, immunities and facilities set out in Article 3 HSA in accordance with international law and international practice:

(*a*) intergovernmental organisations;

(*b*) international institutions;

(*c*) diplomatic missions;

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[2] SR 0.191.2.

[3] SR 0.191.01.

[4] SR 0.191.02.

[5] SR 0.191.2.

(*d*) consular posts;

(*e*) permanent missions or other representations to intergovernmental organisations;

(*f*) special missions;

(*g*) international conferences;

(*h*) secretariats or other bodies established under an international treaty;

(*i*) independent commissions;

(*j*) international courts;

(*k*) arbitration tribunals.

2. Diplomatic missions and permanent missions or other representations to intergovernmental organisations are governed in particular by the Vienna Convention of 18 April 1961[6] on Diplomatic Relations.

3. Consular posts are governed in particular by the Vienna Convention of 24 April 1963[7] on Consular Relations.

4. Special missions are governed in particular by the Convention of 8 December 1969[8] on Special Missions.

5. Privileges, immunities and facilities are granted to independent commissions for the scheduled duration of their activity. The granting of privileges, immunities and facilities may be extended for a limited period if the circumstances so warrant, in particular if the independent commission's mandate is extended or if it requires additional time to draw up and publish its report.

Article 7. Quasi-governmental international organizations

Quasi-governmental international organisations are accorded some or all of the following privileges, immunities and facilities:

(*a*) inviolability of archives;

(*b*) exemption from direct taxes;

(*c*) exemption from indirect taxes;

(*d*) freedom to acquire, receive, hold, transfer and convert funds, currencies, cash and other movable assets.

Article 8. Other international bodies

1. Other international bodies may be accorded all of the privileges, immunities and facilities set out in Article 3 HSA.

2. In determining the scope of the privileges, immunities and facilities to be accorded in each case, the Federal Council shall take into account in particular the structure of the body concerned and its connections to the intergovernmental organisations, interna-

[6] SR 0.191.01.

[7] SR 0.191.02.

[8] SR 0.191.2.

tional institutions, or States with which it works, as well as its role in international relations and its international prominence.

3. Subject to any special provisions contained in a headquarters agreement entered into with the Federal Council or in any other international treaty to which Switzerland is party, other international bodies may be hosted by an intergovernmental organisation or by an international institution only with the consent of the Federal Department of Foreign Affairs (FDFA).

Section 2. Individual beneficiaries

Article 9. Principles

1. The privileges, immunities and facilities accorded to individual beneficiaries are granted in the interest of the institutional beneficiaries concerned and not that of the individuals themselves. Their purpose is not to confer any benefit on individuals but to enable the institutional beneficiaries to carry out their work effectively.

2. In the case of the individuals referred to in Article 2, paragraph 2, letters a and b, HSA, the privileges, immunities and facilities are conditional on the FDFA having established that those individuals are genuinely engaged in official duties. In the case of the persons referred to in Article 2, paragraph 2, letter c, HSA, they are conditional on the authorisation granted them by the FDFA to accompany the principal individual beneficiary.

3. All questions relating to a determination as to whether an individual is genuinely engaged in official duties, an authorisation to accompany a principal individual beneficiary, the scope of privileges, immunities and facilities that apply, and all other questions concerning the legal status in Switzerland of individual beneficiaries, are resolved in accordance with diplomatic practice between the FDFA and the institutional beneficiary concerned and without the individual beneficiary being involved in any way.

Article 10. Scope of privileges, immunities and facilities

The scope of the privileges, immunities and facilities accorded to individuals who, whether on a permanent or a temporary basis, are called to act in an official capacity at any of the institutional beneficiaries referred to in Article 6, paragraph 1, is determined on the basis of the category of staff to which they belong in accordance with international law and international practice. Individuals shall be assigned to the different categories provided for under international law.

Article 11. Categories of individual beneficiary

1. In the case of intergovernmental organisations, international institutions, international conferences, secretariats or other bodies established under an international treaty, independent commissions and other international bodies, the categories of individual beneficiary are in particular the following:

(*a*) members of senior management;

(*b*) high-ranking officials;

(*c*) other officials;

(*d*) representatives of the organisation's members;

(*e*) experts and all other persons acting in an official capacity for these institutional beneficiaries;

(*f*) persons entitled to accompany any of the individual beneficiaries referred to in letters a to e.

2. In the case of international courts and arbitration tribunals, the categories of individual beneficiary, in addition to the categories specified in paragraph 1 above, are in particular the following:

(*a*) judges;

(*b*) prosecutors, deputy prosecutors, and prosecution service staff;

(*c*) registrars, deputy registrars, and registry staff;

(*d*) defence counsel, witnesses and victims;

(*e*) arbitrators;

(*f*) persons entitled to accompany any of the individual beneficiaries referred to in letters a to e.

3. In the case of diplomatic missions, consular posts, permanent missions and other representations to intergovernmental organisations, and special missions, the categories of individual beneficiary are in particular the following:

(*a*) members of diplomatic staff;

(*b*) members of administrative and technical staff;

(*c*) members of service staff;

(*d*) consular officials;

(*e*) consular employees;

(*f*) members of local staff;

(*g*) persons entitled to accompany any of the individual beneficiaries referred to in letters (a) to (f).

Article 12. Individuals who are called to act in an official capacity at a quasi-governmental international organisation

1. Individuals who, whether on a permanent or a temporary basis, are called to act in an official capacity at a quasi-governmental international organisation and who are not Swiss nationals are accorded some or all of the following privileges and immunities for the duration of their service:

(*a*) exemption from direct taxes on the salaries, emoluments and allowances paid to them by the quasi-governmental international organisation;

(*b*) exemption from taxes on lump sums received on any grounds from a pension scheme or other provident fund, as at the time of such payment; the tax exemption does not however cover income earned on such sums or assets in which they are invested, or pensions and annuities paid to former staff by the quasi-governmental international organisation concerned;

(*c*) exemption from Swiss entry and residence requirements.

2. Members of the general assembly, foundation board, executive board or other governing body of a quasi-governmental international organisation may be granted immunity from criminal, civil and administrative proceedings for acts performed in their official capacity as well as inviolability for their documents.

Article 13. Individuals who are called to act in an official capacity at other international bodies

The scope of the privileges, immunities and facilities accorded to individuals who, whether on a permanent or a temporary basis, are called to act in an official capacity at other international bodies shall be determined on the basis of the privileges, immunities and facilities that the Federal Council shall grant to the other international body concerned, pursuant to Article 8 above, and on the basis of the category of staff to which they belong.

Article 14. Eminent persons carrying out an international mandate

Eminent persons carrying out an international mandate may be accorded all of the privileges, immunities and facilities set out in Article 3 HSA. The Federal Council shall determine the scope of the privileges, immunities and facilities according to the circumstances of each particular case.

Article 15. Duration of privileges, immunities and facilities granted to individual beneficiaries

1. Privileges, immunities and facilities are granted to individual beneficiaries for the duration of their official functions.

2. Privileges, immunities and facilities accorded to accompanying persons expire at the same time as those accorded to the person they accompany, unless otherwise provided for in this Ordinance (Chapter 3).

3. Privileges, immunities and facilities accorded to private household employees come to an end one month after the end of their employment even if a dispute with the former employer in relation to the employment remains unresolved.

4. The FDFA shall determine case by case whether, at the end of the period of service and in accordance with international practice, to accord a limited extension of time (courtesy period) in order to give those concerned time to make arrangements for their departure.

Chapter 3. Entry, residence and employment requirements

Article 16. Entry requirements

1. When crossing the border to take up his or her duties, an individual beneficiary must be in possession of a recognised identity document and, where applicable, a visa.

2. A request must be made to the FDFA by the institutional beneficiary concerned in order for the individual beneficiary to be allowed take up his or her duties.

Article 17. Residence requirements

1. The FDFA shall issue legitimation cards to members of the staff of institutional beneficiaries established in Switzerland who are entitled to privileges and immunities and to persons entitled to accompany such persons. It shall determine the different types of legitimation card to be issued and the conditions attaching thereto.

2. The immigration authority of the canton concerned shall issue a standard residence permit in accordance with the applicable law to persons called to act in an official capacity at institutional beneficiaries who are entitled only to exemption from taxes, and to persons entitled to accompany them.

3. The legitimation card issued by the FDFA serves as a residence permit for Switzerland, certifies the holder's privileges and immunities, and exempts him or her from any visa requirement for the duration of his or her function.

4. Individual beneficiaries holding a legitimation card issued by the FDFA are exempted from the obligation to register with their cantonal residents registry. They may however register voluntarily.

Article 18. Employment requirements

1. Institutional beneficiaries are entitled, in accordance with international law, to determine the terms of employment of their staff.

2. Members of diplomatic missions, of consular posts, of permanent missions or other representations to intergovernmental organisations and of special missions who are Swiss nationals or are permanently resident in Switzerland at the commencement of their function are subject to Swiss employment law. Any choice-of-law clause providing for the application of the law of a foreign State shall have effect only to the extent permitted under Swiss law.

3. Members of the local staff of diplomatic missions, of consular posts, of permanent missions or other representations to intergovernmental organisations, and of special missions, are subject to Swiss employment law irrespective of their nationality and of their place of residence at the time of engagement. Any choice-of-law clause providing for the application of the law of a foreign State shall have effect only to the extent permitted under Swiss law.

Article 19. Social security

Insofar as the institutional beneficiary as employer is not, under international law, subject to obligatory Swiss social security legislation and the members of the staff of the institutional beneficiary are not subject to that legislation, the institutional beneficiary shall determine the social protection arrangements for its staff in accordance with international law and shall operate a social security scheme of its own.

Article 20. Accompanying persons

1. The following persons are entitled to accompany the principal individual beneficiary and enjoy the same privileges, immunities and facilities if living together in the same household:

(*a*) the spouse of the principal individual beneficiary;

(*b*) the same-sex partner of the principal individual beneficiary if the partnership has been registered in Switzerland or under an equivalent foreign provision or if the partner is treated by the institutional beneficiary concerned as an official partner or as a dependent;

(*c*) the cohabiting partner of the principal individual beneficiary (which within the meaning of Swiss law is a person of the opposite sex not married to the principal individual beneficiary) if the cohabiting partner is treated by the institutional beneficiary concerned as an official partner or as a dependent;

(*d*) **the unmarried children up to the age of 25 of the principal individual beneficiary;**

(*e*) the unmarried children up to the age of 25 of the spouse, or of the same-sex partner, or of the cohabiting partner, if officially in that person's care.

2. The following persons may, by way of exception, be authorised by the FDFA to accompany a principal individual beneficiary if they live together in the same household; they shall be issued with a legitimation card but shall not be accorded privileges, immunities or facilities:

(*a*) the same-sex partner of the principal individual beneficiary if he or she is not recognised by the institutional beneficiary concerned as an official partner or as a dependent but the application for a residence permit is nonetheless submitted by the institutional beneficiary and the relationship can be shown to be long-standing, and if it is not possible for the couple to register their partnership under Swiss law or under the law of another State;

(*b*) the cohabiting partner of the principal individual beneficiary if the cohabiting partner is not recognised by the institutional beneficiary concerned as an official partner or as a dependent but the application for a residence permit is nonetheless submitted by the institutional beneficiary and the relationship can be shown to be long-standing;

(*c*) the unmarried children over the age of 25 of the principal individual beneficiary if they are in his or her sole care;

(*d*) **the unmarried children over the age of 25 of the spouse, or of the same-sex partner, or of the cohabiting partner, if they are in the principal individual beneficiary's sole care;**

(*e*) the ascendants of the principal individual beneficiary or of his or her spouse, same-sex partner, or cohabiting partner within the meaning of paragraph 1, if they are in the principal individual beneficiary's sole care;

(*f*) in exceptional cases, other persons in the sole care of the principal individual beneficiary if it is not possible for them to be entrusted to the care of a third party in the country of origin (cases of force majeure).

3. Private household employees may be authorised by the FDFA to accompany a principal individual beneficiary if they satisfy the requirements laid down in the separate ordinance on entry, residence and work requirements referred to in Article 1, paragraph 2.

4. Authorisation for the persons referred to in this Article to accompany a principal individual beneficiary must be sought prior to the entry into Switzerland of such persons.

5. The FDFA shall determine case by case whether a person wishing to accompany a principal individual beneficiary satisfies the requirements of this article. All questions arising therefrom shall be resolved in accordance with diplomatic practice between the FDFA and the institutional beneficiary concerned and without the individual beneficiary being involved in any way.

Article 21. Labour market access for persons serving in an official capacity

1. Persons who are called to act in an official capacity at an institutional beneficiary must as rule perform their official duties on a full-time basis. This is without prejudice to the special provisions governing honorary consuls under the Vienna Convention of 24 April 1963[9] on Consular Relations, and those governing persons whose duties are limited to a specific mandate, such as lawyers engaged in proceedings before international courts or arbitration tribunals.

2. Persons who are called to act in an official capacity at an institutional beneficiary may, by way of exception, be authorised by the relevant cantonal authorities to carry out a secondary gainful activity for up to ten hours a week, provided that they are living in Switzerland and the activity concerned is not incompatible with the performance of their official duties. The decision of the cantonal authorities shall be taken in agreement with the FDFA.

3. Teaching a specialised subject may, in particular, constitute an acceptable secondary activity, but any activity of a commercial nature, *inter alia*, shall be deemed incompatible with the performance of the person's official duties.

4. Persons who are called to act in an official capacity at an institutional beneficiary who engage in a secondary gainful activity do not enjoy privileges or immunities of any kind in respect of that activity. In particular, they have no immunity from criminal, civil and administrative proceedings or from execution of any judgment or sentence arising in relation to the secondary gainful activity. Such persons are subject to Swiss law in relation to the secondary gainful activity, in particular Swiss social security legislation, and to tax in Switzerland on earnings from the activity, unless otherwise provided for under a bilateral convention on double taxation or on social security.

Article 22. Facilitated access to employment for persons entitled to accompany the principal individual beneficiary

1. The following persons have facilitated access to employment in Switzerland for the duration of the function of the principal individual beneficiary if they are entitled, in accordance with Article 20, paragraph 1, to accompany the principal individual beneficiary and if they are living in Switzerland and in the same household as the principal individual beneficiary:

(*a*) the spouse of the principal individual beneficiary within the meaning of Article 20, paragraph 1, letter a;

[9] SR 0.191.02.

(*b*) the same-sex partner of the principal individual beneficiary within the meaning of Article 20, paragraph 1, letter b;

(*c*) the cohabiting partner of the principal individual beneficiary within the meaning of Article 20, paragraph 1, letter c;

(*d*) the unmarried children of the principal individual beneficiary, within the meaning of Article 20, paragraph 1, letter d, if they entered Switzerland as authorised accompanying persons before the age of 21; they are entitled to facilitated access to employment until the age of 25, after which they must take the necessary steps to ensure that their residence and employment situations are in accordance with the legislation governing the residence and establishment of non-nationals;

2. To facilitate their access to employment, the FDFA shall, on request, issue to the persons referred to in paragraph 1 a document certifying to potential employers that the individual concerned is not subject to the quota on foreign workers, or to the principle of priority recruitment areas, or to labour market regulations (principle of priority preference for residents, and ex ante vetting of pay and conditions).

3. Persons within the scope of paragraph 1 who engage in gainful activity shall, on submission of a contract of employment, an offer of employment, or a declaration to the effect that they intend to engage in a self-employed activity together with a description of that activity, be issued by the cantonal authority concerned with a special residence permit, known as a 'Ci permit,' in place of their legitimation card. A self-employed activity may be carried out only after the Ci permit-holder has been authorised by the competent authorities to carry out the profession or occupation in question.

4. Persons within the scope of paragraph 1 who engage in gainful activity in Switzerland are subject to Swiss law in relation to that activity. In particular, they enjoy no privileges or immunities and are subject to Swiss social security legislation and to tax in Switzerland on the earnings from the gainful activity unless otherwise provided for under a bilateral convention on double taxation or on social security.

5. The further implementation rules shall be laid down by the FDFA with the agreement of the Federal Office for Migration.

Chapter 4. Procedures for granting privileges, immunities and facilities

Article 23. The Granting of privileges, immunities and facilities

1. Without prejudice to the privileges, immunities and facilities arising directly under international law, the Federal Council shall determine case by case the privileges, immunities and facilities to be granted to institutional beneficiaries and persons who are called to act in an official capacity at such institutions, to eminent persons carrying out an international mandate, and to the persons referred to in Article 20.

2. The FDFA is empowered to grant privileges, immunities and facilities and to enter into international agreements for that purpose, where the duration of the institutional beneficiary's activity does not exceed one year to:

(*a*) special missions, persons called to act in an official capacity at such special missions, and persons entitled to accompany such persons;

(*b*) international conferences, persons called to act in an official capacity at such international conferences, and persons entitled to accompany such persons.

Article 24. Modalities

1. Diplomatic missions, consular posts, and permanent missions or other representations to intergovernmental organisations, the members of such representations and persons entitled to accompany such members become automatically entitled in accordance with international law and international practice to privileges, immunities and facilities on being authorised by the FDFA to establish themselves in Switzerland.

2. The privileges, immunities and facilities of the following institutional beneficiaries, of the persons called to act in an official capacity at such institutional beneficiaries, and of the persons entitled to accompany such persons are granted by way of an agreement to that effect entered into between the Federal Council and the institutional beneficiary concerned:

(*a*) intergovernmental organisations;

(*b*) international institutions;

(*c*) quasi-governmental international organisations;

(*d*) secretariats and or other bodies established under an international treaty;

(*e*) international courts;

(*f*) arbitration tribunals.

3. The privileges, immunities and facilities of the following institutional beneficiaries, of the persons who are called to act in an official capacity at such institutional beneficiaries, and of the persons entitled to accompany such persons are granted by way of a unilateral decision of the Federal Council or of the FDFA or by way of an agreement to that effect entered into between the Federal Council or the FDFA and the institutional beneficiary concerned:

(*a*) special missions;

(*b*) international conferences;

(*c*) independent commissions;

(*d*) other international bodies.

4. The privileges, immunities and facilities of eminent persons carrying out an international mandate are granted by way of a unilateral decision of the Federal Council.

Chapter 5. Acquisition of land and buildings for official purposes

Article 25. Procedure

1. Any application for permission to acquire land or buildings shall be submitted to the FDFA by the acquiring party or its agent, with a copy to be sent to the competent authority in the canton concerned.

2. The application must include the following particulars and documents:

(*a*) the draft contract of acquisition indicating the mode of acquisition (sale, gift, long-term lease, etc.);

(*b*) the purpose of acquisition (residence of head of mission, secretariat of representation, head office of organisation, etc.);

(*c*) a description of the property, to include in particular the area of the land and of the building; in the case of a vacant site or a proposed extension of an existing building, the area proposed to be built upon must also be indicated;

(*d*) a list of the properties in Switzerland already owned by the institutional beneficiary, a description of such properties including in particular the area of the land and buildings concerned and the use of same.

3. The net habitable area of any building intended for residential use may not as a rule exceed 200 m2.

4. The FDFA may impose conditions in respect of an acquisition of property. In particular, it may require reciprocity if the acquiring party is a foreign State acquiring a property for the official needs of its diplomatic mission, consular posts, or permanent missions to intergovernmental organisations in Switzerland.

Article 26. Decision

The FDFA shall issue its decision after receiving the opinion of the canton concerned.

Chapter 6. Financial subsidies and other support measures

Article 27. Financial powers

1. The Federal Council shall decide on financial subsidies and other support measures with a foreseeable cost exceeding CHF 3 million in the case of a one-off measure, or CHF 2 million per annum in the case of a recurring measure.

2. The FDFA:

(*a*) shall decide on one-off financial subsidies and in-kind subsidies not exceeding CHF 3 million;

(*b*) shall decide on recurring financial subsidies and in-kind subsidies of a maximum duration of 4 years and not exceeding CHF 2 million per annum;

(*c*) may fund international conferences in Switzerland;

(*d*) may enter into international treaties to that end.

Article 28. Procedure for granting subsidies and other support measures

1. The procedure for granting financial subsidies and other support measures is laid down in respect of each appropriation during the authorisation process.

2. The procedure for the payment of due compensation to the cantons for the cost of giving effect to Article 20, letter f, HSA is laid down in agreements to be entered into with each canton concerned. The FDFA shall be authorised to enter into such agreements. It indicates in the agreement that, where applicable, the relevant credits are subject to approval by Parliament.

Chapter 7. International non-governmental organisations

Article 29

International non-governmental organisations (INGOs) wishing to benefit from the measures provided for under federal legislation, in particular the tax exemption provided for by the Federal Act of 14 December 1990[10] on Direct Federal Taxation and the facilitated employment of foreign staff provided for under Swiss legislation, must satisfy the relevant statutory requirements and submit an application to the competent authority designated by the relevant statute.

Chapter 8. Powers of the FDFA

Article 30

1. In addition to the powers provided for in the specific provisions of this Ordinance, the FDFA shall:

(*a*) negotiate the agreements to be entered into pursuant to the HSA or this Ordinance, in consultation with the bodies concerned;

(*b*) be the authority responsible for implementing the agreements on privileges, immunities, facilities, and financial subsidies and other support measures, without prejudice to the specific powers of other federal bodies;

(*c*) regulate the details of the implementation of this Ordinance without prejudice to the specific powers of other federal bodies;

(*d*) supervise compliance with the terms of the privileges, immunities and facilities; to this effect it shall take all appropriate measures in accordance with international practice; on finding an instance of abuse it may revoke a natural person's privileges, immunities and facilities where such a measure is proportionate with the objectives;

(*e*) determine case by case whether a person is to be deemed an 'individual beneficiary' within the meaning of Article 2, paragraph 2, letters a and c, HSA and issue the appropriate legitimation cards to eligible persons;

(*f*) determine the length of the courtesy period that may be allowed to an individual beneficiary at the end of his or her period of service;

(*g*) direct the Federal Security Service to instruct the relevant police authorities to implement the further security measures referred to in Article 20, letter f, HSA;

(*h*) enter into the bilateral agreements necessary to secure for the members of the diplomatic missions, the permanent missions or other representations to intergovernmental organisations and of the consular posts of Switzerland abroad the same privileges, immunities and facilities as are accorded to foreign representations of the same category in Switzerland.

2. The FDFA shall adopt rules regulating its own internal allocation of responsibilities.

[10] SR 642.11.

CHAPTER 9. FINAL PROVISIONS

Article 31. Amendment of current legislation

The amendment of current legislation is regulated in the Annex.*

Article 32. Commencement

This Ordinance comes into force on 1 January 2008.

B. NICARAGUA

Act No. 641 Criminal Code of Nicaragua** (Extracts), 16 November 2007

Article 414. Violation of immunity

Any person who violates the immunity of a Head of State, Head of Government or any person protected by immunity pursuant to the international treaties ratified by Nicaragua shall be subject to a penalty of between six months and three years' imprisonment.

Article 36. Aggravating circumstances

The following shall be regarded as aggravating circumstances:

10. Persons protected under international law. Persons whose protected status is recognized pursuant to international instruments ratified by Nicaragua.

Article 500. Misuse of emblems and insignias

Any person who, during an international or internal armed conflict and with the aim of harming or attacking the enemy, pretends to enjoy protected status or uses protective signs, such as the Red Cross or the Red Crescent, the flag of the United Nations or of other international organizations, or signs of truce or surrender; flags, uniforms or insignias of the enemy or of neutral countries or of military or police detachments of the United Nations; or other protective signs referred to in the international treaties ratified by Nicaragua shall be subject to a penalty of between six months and three years' imprisonment.

Article 517. Attacks against peacekeeping or humanitarian assistance missions

Any person who, during an international or internal armed conflict, intentionally attacks personnel, facilities, equipment, units or vehicles participating in a peacekeeping or humanitarian assistance mission implemented pursuant to the Charter of the United Nations, provided that the latter are entitled to the protection afforded to civilians or civilian property under international humanitarian law, shall be subject to a penalty of between seven and ten years' imprisonment.

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* Not reproduced herein.

** Promulgated on 16 November 2007 and entered into force on 8 July 2008.

Chapter II

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

A. Treaties concerning the legal status of the United Nations

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

During 2008, the following State acceded to the Convention:

State	*Date of receipt of instrument of accession*
Micronesia (Federated States of)	5 December 2008

As at 31 December 2008, there were 157 States parties to the Convention.**

2. Agreements relating to missions, offices and meetings

(*a*) Supplementary Agreement to the Agreement between the United Nations Economic Commission for Latin America and the Caribbean and the Government of Chile, signed on 16 February 1953.*** Santiago, 28 December 2007****

The Government of the Republic of Chile and the United Nations Economic Commission for Latin America and the Caribbean (ECLAC),

Considering:

That the Government of Chile and the United Nations Economic Commission for Latin America signed an Agreement on 16 February 1953, as well as two notes dated 23 and 29 December 1953, respectively, which were aimed at supplementing and clarifying that text, in order to regulate conditions for the operation, in Chile, of the Headquarters

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

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

*** United Nations, *Treaty Series,* vol. 314, p. 49.

**** Entered into force on 26 April 2008, in accordance with article 8.

of ECLA, which was established by Economic and Social Council resolution 106 (VI) of 25 February 1948;

That article XI, section 20 (a), of the 1953 Agreement provides that "the Government and ECLA may enter into such supplementary agreements as may be necessary within the scope of that Agreement";

That the definition of an official of ECLAC as set forth in article I, section 1, paragraph (h), is in need of reinterpretation with respect only to the privileges extended by the Government of Chile to accredited officials; and

That a modern, efficient and effective accreditation system is indispensable,

Have agreed as follows:

Article 1

As from the entry into force of this Agreement, and for the purposes set forth in the provisions of article VII of the 1953 Agreement, the expression "officials of ECLAC" shall be understood to refer to all staff members of the Commission who are employed by the United Nations. For the purposes of accreditation and incorporation, a distinction shall be made between senior international officials and international officials.

Article 2

As from the entry into force of this Agreement, "senior international officials of ECLAC" shall mean officials employed by the United Nations at the levels of P 5, D-1, D-2, L-5, L-6 and L-7. These officials shall be covered by section 00.05 of the Customs Tariff, or by such provisions as may supersede it. They shall be accredited as "senior international officials" in accordance with the provisions of article VII, section 15, of the 1953 Agreement. They shall be subject to the provisions of article VII, section 13, paragraphs (a) to (h) of that Agreement.

Article 3

As from the entry into force of this Supplementary Agreement, senior international officials of ECLAC who have been recognized as such by the Ministry of Foreign Affairs shall be permitted to import, free of customs duty, a maximum of three motor vehicles during the period of their service, irrespective of the duration thereof.

Article 4

As from the entry into force of this Agreement, "international officials of ECLAC" shall mean all officials employed by the United Nations at the levels of P 1, P-2, P-3, P-4, L-1, L-2, L-3 and L-4. Such officials shall be subject to the provisions set forth in article VII, section 13, paragraphs (a) to (h) of the 1953 Agreement. They shall be accredited as international officials.

Such officials shall be entitled to a free-on-board one-time installation grant of US$ 30,000, which may be used only within the first 12 months of service reckoned from the date on which the official was accredited.

Household articles and personal effects may be imported as part of the installation grant. A vehicle may be imported once only and within 12 months of the date of accreditation of the official. The said vehicle shall be entitled to diplomatic licence plates.

The aforementioned household articles, personal effects and vehicles may be imported free of customs duty or other charges, and shall be exempt from prohibitions and restrictions on importation. The vehicle shall be registered in accordance with the regulations established for the resident diplomatic corps.

Article 5

On applying to the Government of Chile for accreditation of an official, ECLAC shall submit a document certifying the level of the official's post under the 100 and 200 series of the United Nations Staff Rules. Every six months, the Commission shall also provide the Ministry of Foreign Affairs with a system staff list as an additional instrument for grade verification.

Article 6

This Agreement shall not in any event affect the status of former ECLAC officials who have, prior to its entry into force, been recognized by the Government of Chile as senior members of the regular international staff or equivalent.

Article 7

The maximum of three motor vehicles established in article 3 shall not include any vehicles acquired by ECLAC officials prior to the entry into force of this Agreement.

Article 8

This Supplementary Agreement shall enter into force thirty (30) days after the date on which the Government of Chile informs ECLAC in writing that it has been approved in accordance with the relevant procedures of domestic law.

Provisional article

Officials of ECLAC who have been accredited by the Government of Chile prior to the entry into force of this Supplementary Agreement shall, on its entry into force, be subject to the provisions of articles 2, 3 and 7 thereof. Such officials shall be recognized as "senior international officials".

Done in Santiago, Chile, on 28 December 2007, in the Spanish language, in two equally authentic copies.

For the Government of Chile:	For the Economic Commission for Latin America and the Carribbean:
[*Signed*] Mr. Albert Van Klaveren Stork	[*Signed*] Mr. José Luis Machinea
Minister for Foreign Affairs *ad interim*	Executive Director

(*b*) Status-of-Forces Agreement between the Republic of Cyprus and the United Nations in connection with the support, supplementation and enhancement of the United Nations Interim Force in Lebanon. New York, 25 February 2008*

I. Definitions

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

(*a*) "aircraft" means aircraft in use by the United Nations or by participating States in support of UNIFIL activities;

(*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;**

(*b*) "Force Commander" means the Force Commander of UNIFIL appointed by the Secretary-General of the United Nations. Any reference to the Force Commander in this Agreement shall, except in paragraph 21, include any member of UNIFIL to whom he or she delegates a specified function or authority;

(*c*) "Government" means the Government of the Republic of Cyprus;

(*d*) "Members" means the Force Commander and any personnel of UNIFIL;

(*e*) "Participating State" means a Member State of the United Nations contributing personnel to the military component of UNIFIL and acting in accordance with the Charter of the United Nations;

(*f*) "UNIFIL" means the United Nations Interim Force in Lebanon, including its Maritime Task Force (MTF) established as a maritime subcomponent of its military component;

(*g*) "vehicles" means vehicles in use by the United Nations or by participating States in support of UNIFIL activities;

(*h*) "vessels" means vessels in use by the United Nations in support of UNIFIL activities.

II. Application of the present Agreement

2. Unless specifically provided otherwise, the provisions of the present Agreement and any obligation undertaken by the Government or any privilege, immunity, facility or concession granted to UNIFIL or any member thereof apply in the Republic of Cyprus in respect of:

(*a*) UNIFIL vessels that make visits to the port of Limassol for the purpose of refueling, removing waste, taking on board supplies or rotating their crews, both for the duration of any such visit and while navigating through the territorial waters of the Republic of Cyprus for the purpose of proceeding to the port of Limassol in order to make such a visit and while navigating through those waters for the purpose of proceeding from the port of Limassol back to their patrolling area off the coast of Lebanon after making any such visit;

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* Entered into force on 25 February 2008 by signature, in accordance with paragraph 52.

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

(*b*) the crew members of those vessels during the course of any such visits and voyages, those crew members being considered during those times to be members of UNIFIL with the status of military members of UNIFIL's military component;

(*c*) new crew members arriving in the Republic of Cyprus to join UNIFIL vessels at the port of Limassol and former crew members rotating out of UNIFIL vessels at the port of Limassol and returning from the Republic of Cyprus to their country of origin, those crew members being considered during those times to be members of UNIFIL with the status of military members of UNIFIL's military component;

(*d*) national support elements deployed by participating States to the Republic of Cyprus for the purpose of providing logistic support to UNIFIL vessels at the port of Limassoi, such elements being considered members of UNIFIL with the status of either military or civilian members of UNIFIL's military component, as the case may be;

(*e*) property, equipment, provisions, supplies, materials and other goods, including vehicles and aircraft, deployed by participating States to the Republic of Cyprus for the purpose of providing logistic support to UNIFIL vessels at the port of Limassol, such property, equipment, provisions, supplies, materials, goods and means of transport being considered property, funds and assets of participating States used in connection with UNIFIL.

III. Application of the Convention

3. The Convention on the Privileges and Immunities of the United Nations of 13 February 1946 shall apply to UNIFIL subject to the provisions specified in the present Agreement.

4. UNIFIL, its property, funds and assets, and its members, including the Force Commander, shall enjoy the privileges and immunities specified in the present Agreement as well as those provided for in the Convention, to which the Republic of Cyprus is Party.

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

IV. Status of the peacekeeping operation

6. UNIFIL and its members shall refrain from any action or activity incompatible with the impartial and international nature of their duties or inconsistent with the spirit of the present arrangements. UNIFIL and its members shall observe and respect the laws, regulations, customs and traditions of the Republic of Cyprus and shall be obliged not to interfere in the internal affairs of the Republic of Cyprus. The Force Commander shall take all appropriate measures to ensure the observance of those obligations.

7. The Government undertakes to respect the exclusively international nature of UNIFIL.

United Nations flag and vehicle markings

8. The Government recognizes the right of UNIFIL to display within the Republic of Cyprus the United Nations flag on its vehicles, vessels and otherwise as decided by the Force Commander. Other flags or pennants may be displayed only in exceptional cases.

In these cases, UNIFIL shall give sympathetic consideration to observations or requests of the Government of the Republic of Cyprus.

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

Communications

10. UNIFIL shall enjoy the facilities in respect to communications provided in Article III of the Convention and shall, in coordination with the Government, use such facilities as may be required for the performance of its task. Issues with respect to communications which may arise and which are not specifically provided for in the present Agreement shall be dealt with pursuant to the relevant provisions of the Convention.

11. Subject to the provisions of paragraph 10:

(*a*) UNIFIL shall have authority to install and operate radio sending and receiving stations as well as satellite systems to connect appropriate points within the territory of the Republic of Cyprus with each other and with United Nations offices in other countries, and to exchange traffic with the United Nations global telecommunications network. The telecommunication services shall be operated in accordance with the International Telecommunication Convention and Regulations and the frequencies on which any such station may be operated shall be decided upon in co-operation with the Government and shall be communicated by the United Nations to the International Frequency Registration Board.

(*b*) UNIFIL shall enjoy, within the territory of the Republic of Cyprus, the right to unrestricted communication by radio (including satellite, mobile and hand-held radio), telephone, telegraph, facsimile or any other means, and of establishing the necessary facilities for maintaining such communications, including the establishment of radio sending, receiving and repeater stations. The frequencies on which the radio will operate shall be decided upon in cooperation with the Government. It is understood that connections with the local system of telegraphs, telex and telephones may be made only after consultation and in accordance with arrangements with the Government, it being further understood that the use of the local system of telegraphs, telex and telephones will be charged at the most favourable rate.

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

Travel and transport

12. UNIFIL and its members shall enjoy, together with its vehicles, vessels, aircraft and equipment, freedom of movement throughout the Republic of Cyprus. That freedom shall, with respect to large movements of personnel, stores or vehicles through airports or

on railways or roads used for general traffic within the Republic of Cyprus be coordinated with the Government. The Government undertakes to supply UNIFIL, where necessary, with maps and other information, including locations of mine fields and other dangers and impediments, which may be useful in facilitating its movements.

13. Vehicles, including all military vehicles, vessels and aircraft of UNIFIL shall not be subject to registration or licensing by the Government provided that all such vehicles shall carry the third party insurance required by relevant legislation.

14. UNIFIL and its members, together with its vehicles, vessels and aircraft, may use roads, bridges, canals and other waters, port facilities and airfields without the payment of dues, tolls or charges, including wharfage charges. However, UNIFIL and its members, vehicles, vessels and aircraft will not claim exemption from charges which are in fact charges for services rendered.

Privileges and immunities of the United Nations peacekeeping operation

15. UNIFIL, as a subsidiary organ of the United Nations, enjoys the status, privileges and immunities of the United Nations in accordance with the Convention. The provision of Article II of the Convention which applies to UNIFIL shall also apply to the property, funds and assets of participating States used in the Republic of Cyprus in connection with the national contingents serving in UNIFIL, as provided for in paragraph 5 of the present Agreement. The Government recognizes the right of UNIFIL in particular:

(*a*) To import, free of duty or other restrictions, equipment, provisions, supplies and other goods which are for the exclusive and official use of UNIFIL;

(*b*) To re-export such equipment, provisions, supplies and other goods so imported.

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

V. Facilities for UNIFIL

Vessels

16. Without prejudice to the fact that the waters through which they are navigating or in which they are anchored or berthed remain territorial or internal waters of the Republic of Cyprus, UNIFIL vessels shall be inviolable and subject to the exclusive control and authority of the United Nations.

17. The United Nations alone may consent to the boarding of UNIFIL vessels by any government officials or of any other person not member of UNIFIL.

18. UNIFIL shall have the right, where necessary, to generate, aboard its vessels, electricity for the use of those vessels and their crews.

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

VI. Status of the members of UNIFIL

Privileges and immunities

20. The Force Commander and such high-ranking members of the Force Commander's staff as may be agreed upon with the Government shall have the status specified in Sections 19 and 27 of the Convention.

21. Military personnel of national contingents of participating States assigned to the military component of UNIFIL shall have the privileges and immunities specifically provided for in the present Agreement.

22. Members of UNIFIL shall be exempt from taxation on the pay and emoluments received from the United Nations or from a participating State and any income received from outside the Republic of Cyprus. They shall also be exempt from all other direct taxes, except municipal rates for services enjoyed, and from all registration fees and charges.

23. Members of UNIFIL shall have the right to import free of duty their personal effects in connection with their arrival in the Republic of Cyprus. They shall be subject to the laws and regulations of the Republic of Cyprus governing customs and foreign exchange with respect to personal property not required by them by reason of their presence in the Republic of Cyprus with UNIFIL. Special facilities will be granted by the Government for the speedy processing of entry and exit formalities for all members of UNIFIL, including the military component, upon prior written notification. On departure from the Republic of Cyprus, members of UNIFIL may, notwithstanding the above-mentioned exchange regulations, take with them such funds as the Force Commander certifies were received in pay and emoluments from the United Nations or from a participating State and are a reasonable residue thereof. Special arrangements shall be made for the implementation of the present provisions in the interests of the Government and the members of UNIFIL.

24. The Force Commander shall cooperate with the Government and shall render all assistance within his or her power in ensuring the observance of the customs and fiscal laws and regulations of the Republic of Cyprus by the members of UNIFIL, in accordance with the present Agreement.

Entry, residence and departure

25. The Force Commander and members of UNIFIL shall, whenever so required by the Force Commander, have the right to enter into, reside in and depart from the Republic of Cyprus.

26. The Government of the Republic of Cyprus undertakes to facilitate the entry into and departure from the Republic of Cyprus of the Force Commander and members of UNIFIL and shall be kept informed of such movement. For that purpose, the Force Commander and members of UNIFIL shall be exempt from passport and visa regulations and immigration inspection and restrictions on entering into or departing from the Republic of Cyprus. They shall also be exempt from any regulations governing the residence of aliens in the Republic of Cyprus, including registration, but shall not be considered as acquiring any right to permanent residence or domicile in the Republic of Cyprus.

27. For the purpose of such entry or departure, members of UNIFIL shall only be required to have: (a) an individual or collective movement order issued by or under the authority of the Force Commander or any appropriate authority of a participating State; and

(b) a personal identity card issued in accordance with paragraph 28 of the present Agreement, except in the case of first entry, when the personal identity card issued by the appropriate authorities of a participating State shall be accepted in lieu of the said identity card.

Identification

28. The Force Commander shall issue to each member of UNIFIL before or as soon as possible after such member's first entry into the Republic of Cyprus, a numbered identity card, which shall show full name, date of birth, title or rank, service (if appropriate) and photograph. Except as provided for in paragraph 27 of the present Agreement, such identity card shall be the only document required of a member of UNIFIL.

29. Members of UNIFIL shall be required to present, but not to surrender, their UNIFIL identity cards upon demand of an appropriate official of the Government.

Uniform and arms

30. Military members of UNIFIL shall wear, while performing official duties, the national military uniform of their respective States with standard United Nations accoutrements. The wearing of civilian dress by the above-mentioned members of UNIFIL may be authorized by the Force Commander at other times. Military members of UNIFIL may possess and carry arms while on duty in accordance with their orders.

Permits and licences

31. The Government agrees to accept as valid, without tax or fee, a permit or licence issued by the Force Commander for the operation by any member of UNIFIL of any UNIFIL transport or communication equipment which carries the insurance specified in Article 13 and for the practice of any profession or occupation in connection with the functioning of UNIFIL, provided that no licence to drive a vehicle or pilot an aircraft shall be issued to any person who is not already in possession of an appropriate and valid licence.

32. Without prejudice to the provisions of paragraph 30, the Government further agrees to accept as valid, without tax or fee, a permit or licence issued by the Force Commander to a member of UNIFIL for the carrying or use of firearms or ammunition in connection with the functioning of UNIFIL.

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

33. The Force Commander shall take all appropriate measures to ensure the maintenance of discipline and good order among members of UNIFIL. To this end personnel designated by the Force Commander shall police the vessels of UNIFIL and such areas where its members are deployed. Elsewhere such personnel shall be employed only subject to arrangements with the Government and in liaison with it in so far as such employment is necessary to maintain discipline and order among members of UNIFIL.

34. The military police of UNIFIL shall have the power of arrest over the military members of UNIFIL. Military personnel placed under arrest outside their own contingent areas shall be transferred to their contingent Commander for appropriate disciplinary action. The personnel mentioned in paragraph 33 above may take into custody any other person on the vessels of UNIFIL. Such other person shall be delivered immediately to the

nearest appropriate official of the Government for the purpose of dealing with any offence or disturbance on such vessel.

35. Subject to the provisions of paragraph 21, officials of the Government may take into custody any member of UNIFIL:

(*a*) When so requested by the Force Commander; or

(*b*) When such a member of UNIFIL is apprehended in the commission or attempted commission of a criminal offence. Such person shall be delivered immediately, together with any weapons or other item seized, to the nearest appropriate representative of UNIFIL, whereafter the provisions of paragraph 41 shall apply *mutatis mutandis*.

36. When a person is taken into custody under paragraph 34 or paragraph 35 (b), UNIFIL or the Government, as the case may be, may make a preliminary interrogation but may not delay the transfer of custody. Following such transfer, the person concerned shall be made available upon request to the arresting authority for further interrogation.

37. UNIFIL and the Government shall assist each other in carrying out all necessary investigations into offences in respect of which either or both have an interest, in the production of witnesses and in the collection and production of evidence, including the seizure of and, if appropriate, the handing over of items connected with an offence. The handing over of any such items may be made subject to their return within the terms specified by the authority delivering them. Each shall notify the other of the disposition of any case in the outcome of which the other may have an interest or in which there has been a transfer of custody under the provisions of paragraphs 34-36.

38. In accordance with operative paragraph 5 (a) of Security Council resolution 1502 (2003) of 26 August 2003 and operative paragraph 13 of General Assembly resolution 61/133 of 14 December 2006, the provisions of the Convention on the Safety of United Nations and Associated Personnel, to which the Republic of Cyprus is party, having acceded thereto on 1 July 2003, shall apply in respect of members, equipment, vehicles, vessels and aircraft of UNIFIL in the Republic of Cyprus.

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

Jurisdiction

40. All members of UNIFIL shall be immune from legal process in respect of words spoken or written and all acts performed by them in their official capacity. Such immunity shall continue even after they cease to be members of UNIFIL and after the expiration of the other provisions of the present Agreement.

41. Should the Government consider that any member of UNIFIL has committed a criminal offence, it shall promptly inform the Force Commander and present to him or her any evidence available to it. Subject to the provisions of paragraph 21:

(*a*) If the accused person is a civilian member of the military component, the Force Commander shall conduct any necessary supplementary inquiry and then agree with the Government whether or not criminal proceedings should be instituted. Failing such agree-

ment, the question shall be resolved as provided in paragraph 46 of the present Agreement.

(*b*) Military members of the military component of UNIFIL shall be subject to the exclusive jurisdiction of their respective participating States in respect of any criminal offences which may be committed by them in the Republic of Cyprus.

42. If any civil proceeding is instituted against a member of UNIFIL before any court of the Republic of Cyprus, the Force Commander shall be notified immediately, and he or she shall certify to the court whether or not the proceeding is related to the official duties of such member:

(*a*) If the Force Commander certifies that the proceeding is related to official duties, such proceeding shall be discontinued and the provisions of paragraph 44 of the present Agreement shall apply.

(*b*) If the Force Commander certifies that the proceeding is not related to official duties, the proceeding may continue. If the Force Commander certifies that a member of UNIFIL is unable because of official duties or authorized absence to protect his or her interests in the proceeding, the court shall at the defendant's request suspend the proceeding until the elimination of the disability, but for not more than ninety days. Property of a member of UNIFIL that is certified by the Force Commander to be needed by the defendant for the fulfilment of his or her official duties shall be free from seizure for the satisfaction of a judgment, decision or order. The personal liberty of a member of UNIFIL shall not be restricted in a civil proceeding, whether to enforce a judgment, decision or order, to compel an oath or for any other reason.

Deceased members

43. The Force Commander shall have the right to take charge of and dispose of the body of a member of UNIFIL who dies in the Republic of Cyprus, as well as that member's personal property located within the Republic of Cyprus, in accordance with United Nations procedures.

VII. Settlement of disputes

44. Except as provided in paragraphs 46, any dispute or claim of a private law character to which UNIFIL or any member thereof is a party and over which the courts of the Republic of Cyprus do not have jurisdiction because of any provision of the present Agreement, shall be settled by a Standing Claims Commission to be established for that purpose. One member of the commission shall be appointed by the Secretary-General of the United Nations, one member by the Government and a chairman jointly by the Secretary-General and the Government. If no agreement as to the chairman is reached within thirty days of the appointment of the first member of the commission, the President of the International Court of Justice may, at the request of either the Secretary-General of the United Nations or the Government, appoint the chairman. Any vacancy on the commission shall be filled by the same method prescribed for the original appointment, provided that the thirty-day period there prescribed shall start as soon as there is a vacancy in the chairmanship. The commission shall determine its own procedures, provided that any two members shall constitute a quorum for all purposes (except for a period of thirty days after the creation

of a vacancy) and all decisions shall require the approval of any two members. The awards of the commission shall be final and binding, unless the Secretary-General of the United Nations and the Government permit an appeal to a tribunal established in accordance with paragraph 46. The awards of the commission shall be notified to the parties and, if against a member of UNIFIL the United Nations peacekeeping operation, the Force Commander or the Secretary-General of the United Nations shall use his or her best endeavours to ensure compliance.

45. In accordance with operative paragraph 12 of General Assembly resolution 52/247 of 26 June 1998, third-party claims for property loss or damage and for personal injury, illness or death arising from or directly attributed to the activities of UNIFIL or its members in the Republic of Cyprus, except for those arising from operational necessity, and which cannot be settled through the internal procedures of the United Nations, shall be settled by the United Nations in the manner provided for in paragraph 44 above, provided that the claim is submitted within one year following the occurrence of the loss, damage or injury or, if the claimant did not know or could not reasonably have known of such loss or injury, within one year from the time he or she had discovered the loss or injury, but in any event not later than one year after the termination of UNIFIL's mandate. It is nevertheless understood that, in exceptional circumstances, such as those described in paragraph 20 of the report of the Secretary-General of the United Nations to the General Assembly dated 21 May 1997 (United Nations document A/51/903), the United Nations may accept for consideration a claim made at a later date. Upon determination of liability as provided in this Agreement, the United Nations shall pay compensation within the financial limitations approved by the General Assembly in its resolution 52/247 of 26 June 1998.

46. Any other dispute between UNIFIL and the Government, and any appeal that both of them agree to allow from the award of the Standing Claims Commission established pursuant to paragraph 44 shall, unless otherwise agreed by the parties, be submitted to a tribunal of three arbitrators. The provisions relating to the establishment and procedures of the claims commission shall apply, *mutatis mutandis*, to the establishment and procedures of the tribunal. The decisions of the tribunal shall be final and binding on both parties.

47. All differences between the United Nations and the Government of the Republic of Cyprus arising out of the interpretation or application of the present arrangements which involve a question of principle concerning the Convention shall be dealt with in accordance with the procedure of Section 30 of the Convention.

VIII. Supplemental arrangements

48. The Force Commander and the Government may conclude supplemental arrangements to the present Agreement.

IX. Liaison

49. The Force Commander and the Government shall take appropriate measures to ensure close and reciprocal liaison at every appropriate level.

X. Miscellaneous provisions

50. Wherever the present Agreement refers to the privileges, immunities and rights of UNIFIL and to the facilities the Republic of Cyprus undertakes to provide to UNIFIL, the Government shall have the ultimate responsibility for the implementation and fulfilment of such privileges, immunities, rights and facilities by the appropriate local Republic of Cyprus authorities.

51. The present Agreement is concluded for the sole purpose of assisting in the implementation of Security Council resolution 1701 (2006) of 11 August 2006 and relevant resolutions recalled therein.

52. The present Agreement shall enter into force on signature by or for the Secretary-General of the United Nations and the Government.

53. The present Agreement shall remain in force until the earlier of the following events:

(*a*) the departure of the final element of UNIFIL from the Republic of Cyprus;

(*b*) termination of the present Agreement by the giving of three months notice by the Secretary-General of the United Nations or by the Government of the Republic of Cyprus as the case may be.

54. Notwithstanding the termination of the present Agreement in accordance with paragraph 53:

(*a*) The provisions of paragraphs 38, 40, 46 and 49 shall remain in force;

(*b*) The provisions of paragraph 44 and 45 shall remain in force until all claims have been settled that arose prior to the termination of the present Agreement and were submitted prior to or within one year after termination of UNIFIL's mandate.

In witness whereof, the undersigned, being 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

Done at New York on the 25 day of February of the year 2008, in two original copies in the English language.

For the United Nations	For the Government of the Republic of Cyprus
[*Signed*] Jean-Marie Guéhenno	[*Signed*] Andreas D. Mavroyiannis
Under-Secretary-General for Peacekeeping Operations	Permanent Representative of the Republic of Cyprus to the United Nations in New York

(*c*) Exchange of letters constituting an agreement between the United Nations and the Government of the Kingdom of Lesotho regarding the hosting of "Workshop on Household Surveys and Measurement of Labor Force with Focus on Informal Economy". New York, 4 March 2008 and 2 April 2008*

I

4 March 2008

Excellency,

I have the honor to refer to the arrangements concerning the "Workshop on Household Surveys and Measurement of Labor Force with Focus on Informal Economy" (hereinafter referred to as "the Workshop"). The Workshop will be organized by the United Nations represented by the Department of Economic and Social Affairs (hereinafter referred to as "the United Nations"), and the Government of the Kingdom of Lesotho represented by the National Statistical Office (hereinafter referred to as "the Government"). The Workshop will be held the National Convention Center in Maseru, Lesotho, from 14 to 18 April 2008.

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

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

(*a*) up to 21 participants from Southern African Development Community countries selected by the United Nations;

(*b*) up to 10 local government officials selected by the Government;

(*c*) up to 2 officials from the United Nations;

(*d*) other participants invited by the United Nations and the Government, including representatives of regional and international organizations and the United Nations system.

2. The total number of participants will be approximately 38. The list of participants will be determined by the United Nations in consultation with the Government prior to the holding of the Workshop.

3. The Workshop will be conducted in English.

4. The United Nations will be responsible for:

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

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

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

(*d*) substantive support during and after the Workshop.

5. The Government will be responsible for:

* Entered into force on 2 April 2008, in accordance with the provisions of the said letters.

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

(*b*) reproduction of the Workshop materials;

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

(*d*) invitation as well as any costs related to the participation of national participants as specified in paragraph 1 (b);

(*e*) conference facilities for the Workshop.

6. The cost of transportation and daily subsistence allowance for other participants as specified in paragraph 1 (d) will be the responsibility of their organizations.

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

(*a*) The Convention on the Privileges and Immunities of the United Nations adopted by the General Assembly on 13 February 1946 ("the Convention"), to which the Government is a party, shall be applicable in respect of the Workshop. In particular, the participants invited by the United Nations shall enjoy the privileges and immunities accorded to experts on mission for the United Nations by articles VI and VII of the Convention. Officials of the United Nations participating in or performing functions in connection with the Workshop shall enjoy the privileges and immunities provided under articles V and VII of the Convention. Officials of the Specialized Agencies participating in the Workshop shall be accorded the privileges and immunities under articles VI and VIII of the Convention on the Privileges and Immunities of the Specialized Agencies, adopted by the General Assembly on 21 November 1947;

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

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

(*d*) All participants and all persons performing functions in connection with the Workshop shall have the right of unimpeded entry into and exit from Lesotho. Visas and entry permits, where required, shall be granted free of charge and issued as speedily as possible. When applications are made four weeks before the opening of the Workshop, visas shall be granted not later than two weeks before the opening of the Workshop. If the application is made less than four weeks before the opening, visas shall be granted as speedily as possible, and not later than three days before the opening. Arrangements shall also be made to ensure that visas for the duration of the Workshop are delivered at the airport of arrival to those who are unable to obtain them prior to their arrival. Exit permits, where required, shall be granted free of charge, as speedily as possible, and in any case not later than three days before the closing of the Workshop.

8. The Government shall furnish such police protection as may be required to ensure the effective functioning of the Workshop in an atmosphere of security and tranquillity free from interference of any kind. While such police services shall be

under the direct supervision and control of a senior officer provided by the Government, this officer shall work in close co-operation with a designated senior official of the United Nations.

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

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

(*b*) injury to persons or damage to or loss of property caused by or incurred in using any transport services that are provided for the Workshop by or under the control of the Government;

(*c*) the employment for the Workshop of personnel provided or arranged for by the Government; and

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

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

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

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

[*Signed*] Sha Zukang
Under-Secretary-General

H.E. Mr. Lebohang Fine Maema, KC
Permanent Mission of the Kingdom
of Lesotho to the United Nations
New York

II

Re: Host Country Agreement

2 April 2008

Excellency,

I have the honour to refer to your letter reference DESA-08/54 of 4 March 2008 relating to the proposed arrangements for the hosting of the "Workshop on Household Surveys and Measurement of Labor Force with Focus on Informal Economy" to be held in Maseru, Lesotho from 14 to 18 April 2008.

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

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

Accept, Excellency, the assurances of my highest consideration.

[*Signed*] Lipuo Moteetee (Ms.)
Chargé d'affaires a.i.
Permanent Mission of the Kingdom of Lesotho

Mr. Sha Zukang
Under-Secretary-General
Department of Economic and Social Affairs
United Nations
New York

(*d*) Agreement between the United Nations and the Government of the Republic of the Fiji Islands relating to the establishment in Fiji of the Pacific operations centre of the United Nations Economic and Social Commission for Asia and the Pacific. Bangkok, 12 May 2008*

The United Nations and the Government of the Republic of the Fiji Islands,

Considering that at its 60th Session the United Nations Economic and Social Commission for Asia and the Pacific, by resolution 60/6 of 28 April 2004 on the Revitalization

* Entered into force on 12 May 2008 by signature, in accordance with article XII.

of the UNESCAP Pacific Operations Centre (EPOC) decided to move the Pacific Operations Centre to the Republic of the Fiji Islands from the Republic of Vanuatu;

Desiring to conclude an agreement for the purpose of the establishment of a Pacific Operations Centre in the Republic of the Fiji Islands;

Whereas the Government of the Republic of the Fiji Islands agrees to ensure the availability of all the necessary facilities to enable the Pacific Operations Centre to perform its functions and any related activities;

Have agreed as follows:

Article I. Definitions

Section 1

In this Agreement, unless the context otherwise requires, the following terms have the following meanings:

(*a*) "The EPOC" means the United Nations ESCAP Pacific Operations Centre;

(*b*) "ESCAP" means the United Nations Economic and Social Commission for Asia and the Pacific;

(*c*) "The Government" means the Government of the Republic of the Fiji Islands;

(*d*) "Head" means the Head of the EPOC or his authorized representative;

(*e*) "Laws of Fiji" means the Constitution and Laws of the Republic of the Fiji Islands, and includes decrees, ordinances regulations and orders, issued by or under authority of the Government or its agencies;

(*f*) "Working Site" means the premises occupied by the EPOC, including any buildings and the land ancillary thereto as may be utilized for the purposes of the EPOC;

(*g*) "Archives of the EPOC" means all records, correspondence, documents and other materials belonging to or held by or on behalf of the EPOC;

(*h*) The expression "officials of the EPOC" means the Head and all members of his staff whether stationed in the Republic of the Fiji Islands or elsewhere and who are assigned to the Republic of the Fiji Islands for any period of time for the purpose of the EPOC, irrespective of nationality, with the exception of officials or employees who are both locally recruited and assigned to hourly rates;

(*i*) The expression "expert of the EPOC" means expert on missions for the United Nations as referred to in Section 22 of the Convention on the Privileges and Immunities of the United Nations;

(*j*) "Property" means all property including funds, assets and rights belonging to the EPOC or held or administered by it in furtherance of its constitutional functions;

(*k*) "General Convention" means the Convention on the Privileges and Immunities of the United Nations, adopted by the General Assembly of the United Nations on 13 February 1946,[*] to which the Republic of the Fiji Islands is a party;

(*l*) "Representatives of Governments" includes all delegates, deputy delegates, representatives, alternates, advisers, technical experts, and secretaries of delegates.

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

Article II. Juridical personality and capacity

Section 2

The United Nations acting through the EPOC shall have full juridical personality and in particular the full capacity:

(*a*) To contract;

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

(*c*) To institute legal proceedings.

Article III. Control of working site

Section 3

The Working Site shall be under the control and authority of the EPOC.

Section 4

(*a*) The Working Site shall be inviolable. Government officers and officials shall not enter the Working Site to perform their official duties except upon the agreement or at the request of the Head of the EPOC

(*b*) Without prejudice to the provisions of the General Convention or of this Agreement, the EPOC shall prevent the Working Site from being used as a refuge by persons who are required by the Government for extradition to another country, or who are endeavouring to avoid service of legal process or judicial proceedings;

(*c*) The archives of the EPOC and in general all documents belonging to or held by the EPOC shall be inviolable.

Section 5

(*a*) The appropriate authorities of the Republic of the Fiji Islands shall exercise due diligence to ensure that the tranquillity of the Working Site is not disturbed by any person attempting unauthorized entry or creating disturbance in the immediate vicinity of the Working Site;

(*b*) If so requested by the United Nations or the Head of the EPOC, the appropriate authorities of the Republic of the Fiji Islands shall provide a sufficient number of police for the preservation of law and order in the Working Site, and for the removal therefrom of offenders.

Article IV. Property, funds and assets

Section 6

The EPOC shall in respect of its property, wherever located and by whomsoever held, 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 no waiver of immunity shall extend to any measure of execution.

Section 7

The Working Site and the property of the EPOC, wherever located and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation and any other form of interference, whether by executive, administrative, judicial or legislative action.

Section 8

The assets, income and other property of the EPOC shall be exempt:

(*a*) From any form of direct taxation. The EPOC, however, will not claim exemption from taxes, which are, in fact, no more than charges for public utility services;

(*b*) From customs duties and from prohibitions and restrictions on imports and exports in respect of articles imported or exported by the EPOC for its official use, on the understanding that articles imported under such immunity shall not be sold within the country except in accordance with conditions to be mutually agreed upon;

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

Section 9

The EPOC shall be exempt from excise duties, sales, and luxury taxes and all other indirect taxes when it is making important purchases for official use by the EPOC of property on which such duties or taxes are normally chargeable. However, EPOC 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, and cannot be identified separately from the sales price.

Section 10

Notwithstanding financial controls, regulations or moratoria of any kind, the United Nations acting through the EPOC may in the Republic of the Fiji Islands, freely:

(i) Purchase, hold and dispose of any funds, currencies, financial instruments and securities, operate accounts in any currency, engage in financial transactions and conclude financial contracts; and,

(ii) Transfer its funds, currencies, financial instruments, securities, to or from the Republic of the Fiji Islands, from or to any other country or within the Republic of the Fiji Islands and convert any currency held by it into any other currency.

Article V. Communications

Section 11

(*a*) For postal, telephone, telegraph, internet or e-mail communications, etc., the Government shall accord to the EPOC a treatment equivalent to that accorded to all other Governments including their diplomatic missions, or to other intergovernmental organizations in regard to any priorities, tariffs and charges on mail, cablegrams, telephotos, telephone calls and other communications;

(*b*) The Government shall secure the inviolability of the official communications of the EPOC, whatever the means of communications employed, and shall not apply any censorship to such communications;

(*c*) The EPOC shall have the right to use codes and to despatch and receive official communications, whatever the means of communications employed.

Section 12

The United Nations may install and operate in the Republic of the Fiji Islands point-to-point telecommunication facilities and other communication and transmission facilities as may be necessary to facilitate communications with the EPOC both from within and outside the Republic of the Fiji Islands.

Article VI. Representatives of Governments

Section 13

Representatives of Governments participating in the work of the EPOC or in any conferences which may be convened by the United Nations at the Working Site shall be entitled in the Republic of the Fiji Islands while exercising their official functions and during their journey to and from the Working Site, to the same privileges and immunities as are specified in article IV of the General Convention.

Article VII. Access and residence

(*a*) The appropriate authorities of the Republic of the Fiji Islands shall not interfere with the transit to or from Headquarters of persons holding official posts therein or of persons invited thereto in connection with the official work and activities of the EPOC upon their arrival in, or departure from, the Republic of the Fiji Islands.

(*b*) The Government undertakes, for this purpose, to allow the entry into and residence in the Republic of the Fiji Islands of the persons listed hereunder during their assignment or during the performance of their duties for the EPOC, without charging visa fees and without delay:

(i) Representatives of Members of ESCAP participating in the work of EPOC, including alternate representatives, advisers, experts and staff;

(ii) EPOC officials and experts, as well as their spouses and dependent members of their families;

Article VIII. Privileges and immunities of officials, experts and other persons performing functions of the EPOC

Section 15

1. Officials of the EPOC shall enjoy within and with respect to the Republic of the Fiji Islands the privileges and immunities specified in articles V and VII of the General Convention. In particular, they shall enjoy the following privileges and immunities:

(*a*) Immunity from legal process in respect of words spoken or written and all acts performed by them in their official capacity;

(*b*) Immunity from personal arrest and detention and from seizure of their personal baggage and official effects;

(*c*) Exemption from taxation on the salaries and emoluments paid to them by the United Nations;

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

(*e*) Immunity from national service obligations;

(*f*) The right to import, free of duty, their furniture, appliances and other effects including one automobile, within a period not exceeding six [6] months after taking up their posts in the Republic of the Fiji Islands, and thereafter at five [5] years intervals in accordance with arrangements agreed upon with the Government. If the previously imported articles and effects [including automobiles] are to be sold, conveyed or transferred prior to the five [5] year interval period, payment of duties proportionate to the unspent portion of the five [5] year period will be required.

2. Experts of the EPOC shall enjoy within and with respect to the Republic of the Fiji Islands the privileges and immunities specified in articles VI and VII of the General Convention.

Section 16

Other persons performing functions in connection with the work of the EPOC shall enjoy such privileges and immunities, facilities and courtesies as are necessary for the independent exercise of their functions.

Section 17

In addition to the immunities and privileges specified in Section 15, the Head of the EPOC shall be accorded in respect of himself, his spouse and dependent children, diplomatic facilities customarily accorded by the Government to other Heads of United Nations Organizations present in the country.

Section 18

(*a*) The privileges and immunities accorded by this article are granted in the interests of the EPOC and not for the personal benefit of the individuals themselves. The Secretary-General of the United Nations shall have the right and the duty to waive the immunity of any official, in any case where, in his opinion, such immunity would impede the course of justice and can be waived without prejudice to the interests of the United Nations or the EPOC;

(*b*) The EPOC shall co-operate at all times with the appropriate authorities of the Republic of the Fiji Islands 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;

(*c*) The EPOC and its officials shall co-operate at all times with the appropriate authorities of the Republic of the Fiji Islands to facilitate the proper administration of justice, secure the observance of police regulations, and prevent the occurrence of any

abuses in connection with the privileges and immunities conferred by the Agreement. The Head shall upon request consult with the appropriate authorities of the Republic of the Fiji Islands. If such consultations fail to achieve a result satisfactory to both parties, the matter shall be determined in accordance with the procedure set out in article XI.

Article IX. Laissez-passer

Section 19

The Government shall recognize and accept the United Nations *laissez-passer* issued to officials of the EPOC as a valid travel document equivalent to a passport. Applications for visas from holders of United Nations *laissez-passer* shall be dealt with as speedily as possible.

Article X. Public services and division of responsibilities concerning installation and maintenance of working site

Section 20

The Government shall ensure that the premises of the EPOC are supplied with the necessary public utilities and services, and that such public utilities and services are supplied on equitable terms. In case of any interruption or threatened interruption of any of such services the Government shall take appropriate steps to ensure that the operations of the EPOC are not prejudiced.

Article XII. Settlement of disputes

Section 21

The Head shall take the measures necessary for ensuring the proper settlement of:

(*a*) Disputes resulting from contracts or all disputes relating to individual rights to which the EPOC is a party;

(*b*) Disputes to which an official of EPOC is a party, provided that he/she enjoys immunity by reason of his/her official position, if such immunity has not been waived by the Secretary-General.

Section 22

Any dispute between the Government and the United Nations concerning the interpretation or implementation of this Agreement which is not settled by direct negotiations or other mutually accepted methods shall be resolved according to the procedures set out in section 30 of the General Convention.

Article XII. Final clauses

Section 23

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

Section 24

(*a*) The provisions of the General Convention and of this Agreement shall, where they relate to the same subject matter, be treated wherever possible as complementary, so that the provisions of both shall be applicable and neither shall narrow the effect of the other; but in any case of absolute conflict, the provisions of this Agreement shall prevail;

(*b*) Consultations with respect to modifications of this Agreement shall be entered into at the request of the Government or of the United Nations. Any such modification shall be made in writing by mutual consent.

(*c*) This Agreement shall be interpreted in the light of its primary purpose to enable the EPOC fully and efficiently to discharge its responsibilities and to fulfil its objectives;

(*d*) Wherever this Agreement imposes obligations on the appropriate authorities of the Republic of the Fiji Islands the ultimate responsibility for the fulfilment of such obligations shall rest with the Government;

(*e*) This Agreement and any supplementary agreement entered into between the Government and the United Nations within the scope of its terms of reference shall cease to be in force six months after either of the Parties shall have given notice in writing to the other except as regards provisions which may apply to the normal cessation of the activities of the EPOC within the Republic of the Fiji Islands and the disposal of its property.

In witness whereof:

The respective representatives duly authorized thereto have signed this Agreement in duplicate in the English language.

Done at Bangkok this twelfth day of May 2008.

For the Government of the Republic of the Fiji Islands:	For the United Nations:
[*Signed*]	[*Signed*]
By: Ratu Epeli Nailatikau (Mr.)	By: Noeleen Heyzer (Ms.)
inister for the Foreign Affairs Government of the Republic of the Fiji Islands	Under-Secretary-General of the United Nations and ESCAP Executive Secretary

(*e*) Exchange of letters constituting an agreement between the United Nations and the Government of Brazil regarding the hosting of the Workshop on "Implementation of the International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons". New York, 20 May 2008 and 10 June 2008*

I

20 May 2008

Excellency,

The United Nations, represented by the Office for Disarmament Affairs (UNODA) (hereinafter referred to as "the United Nations"), acting through the United Nations

* Entered into force on 10 June 2008, in accordance with the provisions of the letters.

Regional Centre for Peace, Disarmament and Development in Latin America and the Caribbean (hereinafter referred to as "UN-LiREC"), is co-organizing a Workshop in Rio de Janeiro, Brazil, to be held from 11 to 12 June 2008 (hereinafter referred to as "the Workshop") with the Government of Brazil.

Under its "Disarmament Policy-making and Implementation of Instruments" thematic area of work, UN-LiREC will co-organize the Workshop on "Implementation of the International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons". The main purpose of this Workshop is to promote and facilitate the implementation of the International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons (International Tracing Instrument) and to assist States in their preparations for the Third Biennial Meeting of States (BMS), which will be convened in July 2008.

The following participants, invited by the partners, will attend this Workshop:

(i) Representatives of the following institutions: Organization of American States (OAS); Central American Integration System (SICA); Southern Common Market (MERCOSUR); Caribbean Community (CARICOM); Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF); European Union (EU); International Criminal Police Organization (INTERPOL) and Small Arms Survey;

(ii) Experts from the following countries: Argentina, Bahamas, Barbados, Belize, Bolivia, Brazil, Chile, Colombia, Costa Rica, Cuba, Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Suriname, Trinidad y Tobago, Uruguay and Venezuela;

(iii) Officials from UNODA: 3 UNODA staff members and 3 UN-LiREC staff members.

The total number of participants to be invited will be approximately 60.

The Workshop will be conducted in English, French and Spanish.

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

1. The United Nations shall be responsible for:

(*a*) Provide travel and daily subsistence allowance for sponsored participants;

(*b*) Provide travel and daily subsistence allowance for United Nations officials;

(*c*) Provide coffee break during the Workshop;

(*d*) Provide local transportation for hotel/Workshop location/hotel;

(*e*) Provide interpretation and equipment, as well as computer, printer, photocopy machine, screen and data show;

(*f*) Send invitation letters to participants;

(*g*) Distribute documentation and material prepared by the United Nations for the Workshop; and

(*h*) Organize a reception for the Workshop.

2. The Government shall be responsible for:

(*a*) Provide a conference room for the Workshop;

(*b*) Provide political and administrative focal points; and

(*c*) Designate a General Coordinator for the Workshop.

3. The Convention on the Privileges and Immunities of the United Nations (hereinafter referred to as "the Convention"), adopted by the General Assembly on 13 February 1946,[*] to which the Government of Brazil is a party, shall be applicable in respect of the Workshop. In particular, the participants invited by the United Nations acting through UN-LiREC shall enjoy the privileges and immunities accorded to experts on mission for the United Nations under articles VI and VII of the Convention. Officials of the United Nations participating in or performing functions in connection with the Workshop shall enjoy the privileges and immunities provided under articles V and VII of the Convention.

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

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

6. All participants and United Nations officials performing functions in connection with the Workshop shall have the right of unimpeded entry into and exit from Brazil. Visas and entry permits, where required, shall be granted as speedily as possible and free of charge. When applications are made four weeks before the opening of the Workshop, visas shall be granted not later than two weeks before the opening of the Workshop. If the application is made less than four weeks before the opening, visas shall be granted as speedily as possible and not later than three days before the opening. Arrangements shall also be made to ensure that visas for the duration of the Workshop are delivered at the airport of arrival to those who are unable to obtain them prior to their arrival. Exit permits, where required, shall be granted free of charge, as speedily as possible, and in any case not later than three days before the closing of the Workshop.

7. The Government shall, at its expense, provide such police protection as is required to ensure the safety of the participants and United Nations officials and the effective functioning of the Workshop in an atmosphere of security and tranquillity free from interference of any kind. While such police services shall be under the direct supervision and control of a senior officer provided by the Government, this officer shall work in close cooperation with a designated senior official of the United Nations.

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

(*a*) injury to persons or damage to or loss of property at the Workshop site, or in the conference or office premises whether provided for or arranged by the Government, or rented by the United Nations or otherwise made available for the Workshop;

(*b*) injury to persons or damage to or loss of property caused by or incurred in using the transportation provided by or are under the control of the Government;

(*c*) the employment for the Workshop of personnel provided or arranged by the Government;

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

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

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

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

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

[*Signed*] Sergio Duarte
High Representative
for Disarmament Affairs

Her Excellency
Mrs. Maria Luiza Ribeiro Viotti
Permanent Representative of Brazil
to the United Nations
New York

II

10 June 2008

Excellency,

I have the honour to refer to your letter dated 20 May 2008 relating to the arrangements for the hosting of the Workshop on "Implementation of the International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons" to be held from 11 to 12 June 2008.

In reply, I have the honour to confirm that the terms of your proposal are acceptable to the Government of the Federative Republic of Brazil.

Consequently, your letter and this reply shall constitute an Agreement between the United Nations and the Government of the Federative Republic of Brazil, which shall enter into force on today's date and shall remain in force for the duration of the Workshop and for such additional period as is necessary for the completion of its work and for the resolution of any matters arising out of the Agreement.

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

[*Signed*] Maria Luiza Ribeiro Viotti
Ambassador
Permanent Representative of Brazil
to the United Nations

H. E. Sergio Duarte
High Representative for Disarmament Affairs

(*f*) Exchange of letters constituting an agreement between the United Nations and the Government of Ecuador regarding the hosting of the "Regional Workshop on Bank of the South". New York, 11 June 2008 and 16 June 2008*

I

Excellency,

I have the honour to refer to the arrangements concerning the "Regional Workshop on Bank of the South" (hereinafter referred to as "the Workshop"). The Workshop will be organized by the United Nations represented by the Department of Economic and Social Affairs (hereinafter referred to as "the United Nations"), and the Government of Ecuador represented by the Ministry of Economic Policy Coordination (hereinafter referred to as "the Government"). The Workshop will be held at the Central Bank Complex in Quito, Ecuador, from 23 to 27 June 2008.

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

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

(*a*) Up to 14 non-governmental participants from developing countries selected by the United Nations in consultation with the Government;

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

(*c*) Up to 9 international resource persons selected by the United Nations in consultation with the Government;

(*d*) 2 officials from the United Nations;

(*e*) Other participants invited by the United Nations and the Government, including representatives of regional and international organizations and the United Nations system. Included are Latin American government officials in charge of Bank of the South.

2. The total number of participants will be approximately 45. The list of participants will be determined by the United Nations in consultation with the Government prior to the holding of the Workshop.

* Entered into force on 16 June 2008, in accordance with the provisions of the letters.

3. The Workshop will be conducted in English and Spanish. Simultaneous interpretation will be provided by the Government.

4. The United Nations will be responsible for:

(*a*) Planning and running of the Workshop and the preparation of the appropriate documentation, both in Spanish and English;

(*b*) Invitations as well as the selection of participants as specified in paragraphs 1 (a), 1 (c), l (d),and l (e);

(*c*) Administrative arrangements and costs relating to the issuance of airline tickets and the payment of subsistence allowance for the participants as specified in paragraphs l (a), 1 (c) and l (d);

(*d*) Substantive support during and after the Workshop.

5. The Government will be responsible for:

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

(*b*) Reproduction of the Workshop materials;

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

(*d*) Invitation as well as any costs related to the participation of national participants as specified in paragraph l (b);

(*e*) Provision/contracting of interpretation services for the Workshop;

(*f*) Conference facilities for the Workshop.

6. The cost of transportation and daily subsistence allowance for other participants as specified in paragraph l (e) will be the responsibility of their organizations.

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

(*a*) The Convention on the Privileges and Immunities of the United Nations adopted by the General Assembly on 13 February 1946 ("the Convention"), to which the Government is a party, shall be applicable in respect of the Workshop. In particular, the participants invited by the United Nations shall enjoy the privileges and immunities accorded to experts on mission for the United Nations by articles VI and VII of the Convention. Officials of the United Nations participating in or performing functions in connection with the Workshop shall enjoy the privileges and immunities provided under articles V and VII of the Convention. Officials of the Specialized Agencies participating in the Workshop shall be accorded the privileges and immunities under articles VI and VIII of the Convention on the Privileges and Immunities of the Specialized Agencies, adopted by the General Assembly on 21 November 1947;

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

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

(*d*) All participants and all persons performing functions in connection with the Workshop shall have the right of unimpeded entry into and exit from Ecuador. Visas and entry permits, where required, shall be granted free of charge and issued as speedily as possible. When applications are made four weeks before the opening of the Workshop, visas shall be granted not later than two weeks before the opening of the Workshop. If the application is made less than four weeks before the opening, visas shall be granted as speedily as possible, and not later than three days before the opening. Arrangements shall also be made to ensure that visas for the duration of the Workshop are delivered at the airport of arrival to those who are unable to obtain them prior to their arrival. Exit permits, where required, shall be granted free of charge, as speedily as possible, and in any case not later than three days before the closing of the Workshop.

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

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

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

(*b*) Injury to persons or damage to or loss of property caused by or incurred in using any transport services that are provided for the Workshop by or under the control of the Government;

(*c*) The employment for the Workshop of personnel provided or arranged for by the Government; and

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

10. Any dispute concerning the interpretation or implementation of this Agreement, except for a dispute subject to the appropriate provisions of the Convention or to any other applicable agreement, shall, unless the Parties otherwise agree, be resolved by negotiations or other agreed mode of settlement. If, within three months from the date of the first meeting between the Parties, such dispute is not settled by negotiation or any other agreed mode of settlement, it shall be submitted at the request of either Party for a final decision to a tribunal of three arbitrators, one of whom shall be appointed by the Secretary-General of the United Nations, one by the Government and the third, who shall be the Chairperson, by the other two arbitrators. If either Party does not appoint an arbitrator within three months of the other Party having notified the name of its arbitrator, or if the first two arbitrators do not, within three months of the appointment or nomination of the second one of them, appoint the Chairperson, then such arbitrators shall be nominated by the President of the International Court of Justice at the request of either Party to the

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

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

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

[*Signed*] Sha Zukang
Under-Secretary-General

Her Excellency
María Fernanda Espinosa
Permanent Representative of Ecuador
to the United Nations
New York

II

New York, June 16, 2008

Dear Mr. Sha,

Regarding the Regional Workshop on Bank of the South, I have the honor to confirm the acceptance by the Government of Ecuador of the terms of the arrangements as set out in your letter DESA-08/226, June 11, 2008.

I am pleased to confirm that this exchange of letters shall constitute an Agreement between the Government of Ecuador and the United Nations regarding the provision of host facilities for Regional Workshop on Bank of the South, to be held in Quito, from 23 to 27 June, 2008.

I avail this opportunity to renew the assurances of highest consideration

[*Signed*]María Fernanda Espinosa
Permanent Representative of Ecuador
to the United Nations

Sha Zukang
Under-Secretary-General
Department of Economic and Social Affairs
United Nations
New York

(*g*) Exchange of letters constituting an agreement between the United Nations and the Government of Finland regarding the hosting of the "Expert Group Meeting on Promoting Social Integration". New York, 2 and 3 July 2008*

I

2 July 2008

Excellency,

1. I have the honour to refer to the arrangements concerning the "Expert Group Meeting on Promoting Social Integration" (hereinafter referred to as "the Meeting"). The Meeting falls within the mandate of the preparations for 47th session of the Commission for Social Development as stipulated in the Economic and Social Council's resolution 2000/22.

2. The Meeting, organized by the United Nations, represented by the Department of Economic and Social Affairs (hereinafter referred to as "the United Nations"), in cooperation with the Government of the Finland, represented by the Ministry for Foreign Affairs (hereinafter referred to as "the Government"), will be held in Helsinki, Finland from 8 to 10 July 2008.

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

3. The Meeting will be attended by the following participants:

(*a*) up to 14 experts;

(*b*) up to 2 officials from the United Nations.

4. The total number of participants will be approximately 20. The list of participants will be determined by the United Nations after consultation with the Government.

5. The Meeting will be conducted in English.

6. The United Nations will be responsible for:

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

(*b*) the invitations of participants, as specified in sub-paragraph 3 (a);

(*c*) substantive support during the Meeting;

(*d*) issuance of round trip air tickets and payment of terminal expenses and daily subsistence allowance in accordance with the prevailing United Nations rates for the participants mentioned in subparagraphs 3 (a) and 3 (b);

7. The Government will provide a contribution of EUR 47,000 to co-finance the expenses of transportation and daily subsistence allowance in accordance with prevailing United Nations rates for the participants mentioned in subparagraph 3 (a).

8. Furthermore, the Government will provide at its cost the following:

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

(*b*) meeting premises and facilities for the Meeting;

* Entered into force 3 July 2008, in accordance with the provisions of the letters.

(*c*) the reproduction of the Meeting materials in English;

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

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

(*a*) The Convention on the Privileges and Immunities of the United Nations adopted by the General Assembly on 13 February 1946 (hereinafter referred to as "the Convention"), to which the Government is a party shall be applicable in respect of the Meeting. In particular the participants invited by the United Nations, who are designated by the Secretary-General as experts on mission for the United Nations, shall enjoy the privileges and immunities accorded to experts on mission for the United Nations under articles VI and VII of the Convention. Officials of the United Nations participating in or performing functions in connection with the Meeting shall enjoy privileges and immunities provided under articles V and VII of the Convention. Officials of the specialized agencies participating in the Meeting shall be accorded the privileges and immunities provided under articles VI and VIII of the Convention on the Privileges and Immunities of the Specialized Agencies, adopted by the General Assembly on 21 November 1947;

(*b*) Without prejudice to the provisions of the Conventions referred to in sub-paragraph 9 (a), all participants and persons performing functions in connection with the Meeting shall enjoy such additional facilities and courtesies as are necessary for the independent exercise of their functions in connection with the Meeting;

(*c*) Personnel provided by the Government pursuant to this Agreement shall be accorded all facilities necessary for the independent exercise of their functions in connection with the Meeting.

(*d*) All participants and all persons performing functions in connection with the Meeting shall have the right of unimpeded entry into and exit from Finland. Visas and entry permits, where required, shall be granted free of charge and as speedily as possible.

The provisions outlined in the paragraph above do not exclude the presentation by the Government of well-founded objections based on law concerning a particular individual. Such objections, however, must relate to specific criminal or security related or similar fundamental matters and not to nationality, religion, professional or political affiliation.

10. The Government shall furnish such arrangements as may be required to ensure the effective functioning of the Meeting in an atmosphere of security and tranquillity free from interference of any kind. Such arrangements shall be carried out in close cooperation with a designated senior official of the United Nations.

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

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

(*b*) Injury to persons or damage to or loss of property caused by or incurred in using any transport services that are provided for the Meeting by or under the control of the Government;

(*c*) The employment for the Meeting of personnel provided or arranged for by the Government;

and the Government shall indemnify and hold the United Nations and its officials harmless in respect of any such action, claim or other demand, except if it is agreed by the parties that such injury or damage was caused by gross negligence or wilful misconduct by United Nations personnel.

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

13. I further propose that upon receipt of your Government's confirmation in writing of the above, this exchange of letters shall constitute an Agreement between the United Nations and the Government of Finland, represented by the Ministry for Foreign Affairs, regarding the hosting of the "Expert Group Meeting on Promoting Social Integration", which shall enter into force on the date of your reply and shall remain in force for the duration of the Meeting and for such additional period as is necessary for the completion of its work and for the resolution of any matters arising out of the Agreement.

Accept, Excellency, the assurances of my highest consideration.

[*Signed*] Sha Zukang
Under-Secretary-General

H.E. Ms. Kirsti Lintonen
Ambassador Extraordinary and Plenipotentiary
Permanent Representative of Finland to the United Nations
New York

II

3 July 2008

Excellency,

I have the honour to refer to your letter with ref. no. DESA/08/291 and DESA/08/292 of 02 July 2008, relating to the arrangements for the "Expert Group Meeting on Promoting Social Integration" which will take place in Helsinki, Finland from 8 to 10 July 2008.

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

Consequently, your letter and this reply shall constitute an Agreement between the United Nations and the Government of Finland, which shall enter into force on today's date and shall remain in force for the duration of the Meeting and for such additional period as is necessary for the completion of its work and for the resolution of any matters arising out of the Agreement.

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

Sincerely,

[*Signed*] Heli Kanerva
Minister Councellor
Charge d'affaires a.i.

Mr. Sha Zukang
Under-Secretary-General
for Economic and Social Affairs
United Nations, New York

(*h*) Agreement between the United Nations and the Government of the Republic of India regarding the arrangements for the 2008 Internet Governance Forum Meeting. Geneva, 17 November 2008*

Whereas the Secretary-General accepted the invitation of the Government of the Republic of India, represented by the Department of Information and Technology, (hereinafter referred to as the "Government") to hold the 2008 Internet Governance Forum Meeting (hereinafter referred to as the "Meeting") in Hyderabad,

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

Article I. Date and place of the meeting

The Meeting shall be held in Hyderabad, at the Hyderabad International Convention Centre, from 3 to 6 December 2008.

Article II. Attendance at the meeting

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

(*a*) States;

(*b*) Private Sector;

(*c*) Civil Society;

(*d*) The academic and technical communities;

(*e*) Intergovernmental organizations;

(*f*) International organizations and non-governmental organizations;

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

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

* Entered into force 17 November 2008 by signature, in accordance with article XIV.

2. The list of participants will be determined by the United Nations and communicated to the Government, prior to the holding of the Meeting.

3. All meetings 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 division of functions and responsibilities between the United Nations and the Government is set out in Annex I* to the present Agreement.

2. The Government shall provide the necessary premises, including meeting rooms for informal meetings, office space, working areas and other related facilities, as specified in Annex II* and Annex III.* 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 Meeting. The meeting rooms shall be equipped for reciprocal simultaneous interpretation between six languages and shall have facilities for digital 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 as specified in Annex IV*. The premises shall remain at the disposal of the United Nations 24 hours a day from one day prior to the meeting until the day after it closes.

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

3. The Government shall provide the necessary Information and Communication Technology (ICT) services, as specified in Annex V.*

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

Article V. Medical facilities

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

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

* Not reproduced herein.

Article VI. Transport

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

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

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

4. The Government shall also provide regular shuttle buses to transport people between the hotels and the Meeting venue for the duration of the Meeting.

Article VII. Police protection

The Government shall furnish such police protection as may be required to ensure the effective functioning of the Meeting in an atmosphere of security and tranquillity free from interference of any kind. While such police services shall be under the direct supervision and control of a senior officer provided by the Government, this officer shall work in close co-operation with a designated senior official of the United Nations. In this regard, specific security aspects will be agreed upon by a separate arrangement between United Nations Security and the competent Indian Authority.

Article VIII. Local personnel

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

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

Article IX. Financial arrangements

1. The Government, in addition to the financial obligations provided for elsewhere in this Agreement, shall, in accordance with General Assembly resolution 31/140, section I, paragraph 5, bear the actual additional costs directly or indirectly involved in holding the Meeting in the Republic of India rather than at Geneva in which the established headquarters of the Secretariat of the Internet Governance Forum resides. Such costs, which are provisionally estimated at approximately US$ 517,078.00, 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 Meeting, as well as the costs of shipping

any necessary equipment and supplies. Arrangements for the travel of United Nations officials required to plan for or service the Meeting and for the shipment of any necessary equipment and supplies shall be made by the Secretariat in accordance with the Staff Regulations and Rules of the United Nations and its related administrative practices regarding travel standard, baggage allowances, subsistence payments and terminal expenses.

2. The Government shall, not later than 31 October 2008, deposit with the United Nations the sum of US$ 517,078.00, representing the total estimated costs referred to in paragraph 1. If necessary, the Government shall make further advances as requested by the United Nations so that the latter will not at any time have to finance temporarily from its cash resources the extra costs that are the responsibility of the Government.

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

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

Article X. Liability

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

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

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

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

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

Article XI. Privileges and immunities

1. The Convention on the Privileges and Immunities of the United Nations adopted by the General Assembly on 13 February 1946 (hereinafter referred to as "the Convention"), to which the Government is a party, shall be applicable in respect to the Meeting.

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

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

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

(*e*) All participants and all persons performing functions in connection with the Meeting shall have the right of unimpeded entry into and exit from India. Visas and entry permits, where required, shall be granted free of charge and issued as speedily as possible. When applications are made four weeks before the opening of the Meeting, visas shall be granted not later than two weeks before the opening of the Meeting. If the application is made less than four weeks before the opening, visas shall be granted as speedily as possible and not later than three days before the opening. Arrangements shall also be made to ensure that visas for the duration of the Meeting are delivered at the airport of arrival to those who are unable to obtain them prior to their arrival. Exit permits, where required, shall be granted free of charge, as speedily as possible and in any case not later than three days before the closing of the Meeting.

(*f*) For the purpose of the Convention on the Privileges and immunities of the United Nations, the meeting premises specified in article III, paragraph 1, above, shall be deemed to constitute premises of the United Nations in the sense of section 3 of the Convention and access thereto shall be subject to the authority and control of the United Nations. The premises shall be inviolable for the duration of the Meeting, including the preparatory stage and the winding-up.

(*g*) 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 Meeting. It shall issue without delay any necessary import and export permits for this purpose.

Article XII. Settlement of disputes

Any dispute between the United Nations and the Government concerning the interpretation or application of this Agreement that is not settled by negotiation or other agreed mode of settlement shall be referred at the request of either party for final decision to a tribunal of three arbitrators, one to be named by the Secretary-General of the United Nations, one to be named by the Government and the third, who shall be the chairperson, 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. Annexes

All annexes* to this Agreement form an integral part of the Agreement.

Article XIV. Final provisions

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

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

Signed this day 17th of November 2008 at Geneva in duplicate in English.

For the United Nations	For the Government of India
[*Signed*] Sha Zukang	[*Signed*] Swashpawan Singh
Under-Secretary-General for Economic and Social Affairs	Permanent Representative of India to the United Nations Office in Geneva

(*i*) Agreement between the Government of Nepal and the United Nations concerning the status of the United Nations Mission in Nepal. Kathmandu, 5 December 2008*

I. Definitions

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

(*a*) "UNMIN" means the United Nations Mission in Nepal, established in accordance with Security Council resolution 1740 (2007) of 23 January 2007.

(*b*) "Special Representative" means the Special Representative for Nepal appointed by the Secretary-General of the United Nations. Any reference to the Special Representative in this Agreement shall, except in paragraph 24, include any member of UNMIN to whom he or she delegates a specified function or authority. It shall also include, including in paragraph 24, any member of UNMIN whom the Secretary-General may designate as acting Head of Mission of UNMIN following the death or resignation of the Special Representative;

(*c*) "member of UNMIN" means:

(i) the Special Representative;

* Not reproduced herein.

** Entered into force on 5 December 2008 by signature, in accordance with article XI.

(ii) officials of the United Nations assigned to serve with UNMIN, including those recruited locally;

(iii) United Nations Volunteers assigned to serve with UNMIN;

(iv) arms monitors assigned to serve with UNMIN;

(v) other persons assigned to perform missions for UNMIN, including United Nations civilian police advisers;

(*d*) "the Government" means the Government of Nepal;

(*e*) "the territory" means the territory of Nepal;

(*f*) "the Convention" means the Convention on the Privileges and Immunities of the United Nations adopted by the General Assembly of the United Nations on 13 February 1946, to which Nepal is a Party;

(*g*) "contractors" means persons, other than members of UNMIN, engaged by the United Nations, including juridical as well as natural persons and their employees and subcontractors, to perform services for UNMIN or to supply equipment, provisions, supplies, fuel, materials and other goods, including spare parts and means of transport, in support of UNMIN activities. Such contractors shall not be considered third party beneficiaries to this Agreement;

(*h*) "vehicles" means vehicles in use by the United Nations and operated by members of UNMIN or contractors in support of UNMIN activities;

(*i*) "aircraft" means aircraft in use by the United Nations and operated by members of UNMIN or contractors in support of UNMIN activities.

II. Application of the present Agreement

2. Unless specifically provided otherwise, the provisions of the present Agreement and any obligation undertaken by the Government and any privilege, immunity, exemption, facility or concession granted to UNMIN or to any member of UNMIN or to its contractors shall apply in Nepal only.

III. Application of the Convention

3. UNMIN, its property, funds and assets and its members shall enjoy the privileges and immunities, exemptions and facilities specified in the present Agreement, as well as those provided for in the Convention.

IV. Status of UNMIN

4. UNMIN and its members shall refrain from any action or activity incompatible with the impartial and international nature of their duties or inconsistent with the spirit of the present Agreement. UNMIN and its members shall respect all local laws and regulations. The Special Representative shall take all appropriate measures to ensure the observance of these obligations.

5. The Government undertakes to respect the exclusively international nature of UNMIN.

United Nations flag, markings and identification

6. The Government recognizes the right of UNMIN to display the United Nations flag on its headquarters and other premises, on it vehicles and otherwise as decided by the Special Representative.

7. Vehicles and aircraft of UNMIN shall carry a distinctive United Nations identification, which shall be notified to the Government.

Communications

8. UNMIN shall enjoy the facilities in respect of communications that are provided for in Article III of the Convention. Issues with respect to communications which may arise and which are not specifically provided for in the present Agreement shall be dealt with pursuant to the relevant provisions of the Convention.

9. Subject to the provisions of paragraph 8:

(*a*) UNMIN shall have the right to install and to operate radio sending, receiving and repeater stations, as well as satellite systems, in order to connect appropriate points within the territory of Nepal with each other and with United Nations offices in other countries and to exchange telephone, voice, facsimile and other electronic data with the United Nations global telecommunications network. Such telecommunication services shall be operated in accordance with the International Telecommunication Convention and Regulations. The frequencies on which such services may operate shall be decided upon in cooperation with the Government and shall be allocated expeditiously by the Government. UNMIN shall be exempt from any and all taxes on, and from any and all fees for, the allocation of frequencies for this purpose, as well as from any and all taxes on, and all fees for, their use. However, UNMIN will not claim exemption from fees which are in fact no more than charges for services rendered, it being understood that such charges shall be charged at the most favourable rate.

(*b*) UNMIN shall enjoy, within the territory of Nepal, the right to unrestricted communication by radio (including satellite, mobile and hand-held radio), telephone, electronic mail, facsimile or any other means, and of establishing the necessary facilities for maintaining such communications within and between premises of UNMIN, including the laying of cables and land lines and the establishment of fixed and mobile radio sending, receiving and repeater stations. The frequencies on which the radio may operate and the areas of land on which sending, receiving and repeater stations may be erected shall be decided upon in cooperation with the Government and shall be allocated expeditiously. UNMIN shall be exempt from any and all taxes on, and from any and all fees for, the allocation of frequencies for this purpose, as well as from all taxes on, and all fees for, their use. However, UNMIN will not claim exemption from fees which are in fact no more than charges for services rendered, it being understood that such charges shall be charged at the most favourable rate. Connections with local telephone and electronic data systems may be made only after consultation and in accordance with arrangements made with the Government. Use of those local systems by UNMIN shall be charged at the most favourable rate.

(*c*) UNMIN may make arrangements through its own facilities for the processing and transport of private mail addressed to or emanating from members of UNMIN. The Government shall be informed of the nature of such arrangements and shall not interfere

with or apply censorship to the mail of UNMIN or its members. In the event that postal arrangements applying to private mail of members of UNMIN are extended to transfer of currency or the transport of packages and parcels, the conditions under which such operations are conducted shall be agreed with the Government.

Travel and transport

10. UNMIN, its members and contractors, together with their property, equipment, provisions, supplies, fuel, materials and other goods, including spare parts, as well as vehicles and aircraft, including the vehicles and aircraft of contractors used exclusively in the performance of services for UNMIN, shall enjoy full freedom of movement without delay throughout Nepal by the most direct route possible for the purpose of executing the tasks defined in UNMIN's mandate. The Government shall, where necessary, provide UNMIN with maps and other information, where available, including maps of and information on the location of minefields and other dangers and impediments, which may be useful in facilitating UNMIN's movements and ensuring the safety and security of its members.

11. Vehicles and aircraft shall not be subject to registration or licensing by the Government, it being understood that copies of all relevant certificates issued by appropriate authorities in other States in respect of aircraft shall be provided by UNMIN to the Civil Aviation Authority of Nepal and that all vehicles and aircraft shall carry third party insurance. UNMIN shall provide the Government, from time to time, with updated lists of UNMIN vehicles.

12. UNMIN and its members and contractors, as well as vehicles and aircraft, including vehicles and aircraft of its contractors used exclusively in the performance of services for UNMIN, may use roads, bridges, airfields and airspace without the payment of any form of monetary contributions, dues, tolls, user fees or charges, including airport taxes, landing fees, parking fees and overflight fees. However, UNMIN will not claim exemption from charges which are in fact charges for services rendered, it being understood that such charges shall be charged at the most favourable rates.

Privileges and immunities of UNMIN

13. UNMIN, as a subsidiary organ of the United Nations, enjoys the status, rights, privileges and immunities, exemptions and facilities of the United Nations pursuant to and in accordance with the Convention. The Government recognizes in particular:

(*a*) The right of UNMIN, as well as of its contractors, to import, by the most convenient and direct route by land or air, free of duty, taxes, fees and charges and free of prohibitions and restrictions, equipment, provisions, supplies, fuel, materials and other goods, including spare parts and means of transport, which are for the exclusive and official use of UNMIN or for resale in the commissaries provided for in subparagraph (b);

(*b*) The right of UNMIN to establish, maintain and operate commissaries at its headquarters and other premises for the benefit of members of UNMIN, but not of locally recruited personnel. Such commissaries may provide goods of a consumable nature and other articles to be specified by the Special Representative and approved by the Government in advance. The Special Representative shall take all necessary measures to prevent abuse of such commissaries and the sale or resale of such goods to persons other than

members of UNMIN. He or she shall give due consideration to observations or requests by the Government concerning the operation of the commissaries;

(*c*) The right of UNMIN, as well as of its contractors, to clear ex customs and excise warehouse, free of duty, taxes, fees and charges and free of prohibitions and restrictions, equipment, provisions, supplies, fuel, materials and other goods, including spare parts and means of transport, which are for the exclusive and official use of UNMIN or for resale in the commissaries provided for in subparagraph (b);

(*d*) The right of UNMIN, as well as of its contractors, to re-export or otherwise dispose of all usable items of property and equipment, including spare parts and means of transport, and all unconsumed provisions, supplies, materials, fuel and other goods which have previously been imported, cleared ex customs and excise warehouse or purchased locally for the exclusive and official use of UNMIN and which are not transferred, or otherwise disposed of, on terms and conditions to be agreed upon, to the competent local authorities of Nepal.

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

For the purposes of this paragraph, neither UNMIN nor its contractors will claim exemption from fees and charges which are in fact no more than charges for services rendered, it being understood that such fees and charges shall be charged at the most favourable rate.

V. Facilities for UNMIN and its contractors

Premises required for conducting the operational and administrative activities of UNMIN

14. The Government shall provide, without cost to UNMIN, in agreement with the Special Representative and for as long as may be required, such areas for headquarters and other premises as may be necessary for the conduct of the operational and administrative activities of UNMIN, including the establishment of the necessary facilities for maintaining communications in accordance with paragraph 9. Without prejudice to the fact that all such premises remain territory of Nepal, they shall be inviolable and subject to the exclusive control and authority of the United Nations. The Government shall guarantee unimpeded access to such United Nations premises. Where members of UNMIN are co-located with Nepal Army personnel or Maoist army combatants, a permanent, direct and immediate access by UNMIN to those premises shall be guaranteed.

15. The Government undertakes to assist UNMIN in obtaining and making available, where applicable, water, sewerage, electricity and other facilities free of charge, or, where this is not possible, at the most favourable rate, and free of all fees, duties and taxes, including value-added tax. Where such utilities or facilities are not provided free of charge, payment shall be made by UNMIN on terms to be agreed with the competent authority. UNMIN shall be responsible for the maintenance and upkeep of facilities so provided. In the event of interruption or threatened interruption of service, the Government undertakes to give, as far as is within its powers, the same priority to the needs of UNMIN as to essential government services.

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

17. Any government official or any other person seeking entry to UNMIN premises shall obtain the permission of the Special Representative.

Provisions, supplies and services, and sanitary arrangements

18. The Government agrees to grant promptly, upon presentation by UNMIN or by its contractors of a bill of lading, airway bill, cargo manifest or packing list, all necessary authorizations, permits and licenses required for the import of equipment, provisions, supplies, fuel, materials and other goods, including spare parts and means of transport, for the exclusive and official use of UNMIN, including in respect of import by its contractors, free of any prohibitions and restrictions and without the payment of monetary contributions or duties, fees, charges or taxes, including value-added tax. The Government likewise agrees to grant promptly all necessary authorizations, permits and licenses required for the purchase or export of such goods, including in respect of purchase or export by UNMIN's contractors, free of any prohibitions and restrictions and without the payment of monetary contributions, duties, fees, charges or taxes.

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

20. For the proper performance of the services in support of UNMIN provided by its contractors, other than by nationals of Nepal resident in Nepal, the Government agrees to provide such contractors with facilities for their entry into and departure from Nepal, without delay or hindrance, and for their residence in Nepal, as well as for their repatriation in time of crisis. For this purpose, the Government shall promptly issue to such contractors, free of charge and without any restrictions, all necessary visas, licenses and permits. UNMIN's contractors, other than nationals of Nepal resident in Nepal, shall be accorded exemption from taxes and monetary contributions in Nepal on services, equipment, provisions, supplies, fuel, materials and other goods, including spare parts and means of transport, provided to UNMIN, including corporate, income, social security and other similar taxes arising directly from or related directly to the provision of such services or goods.

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

Recruitment of local personnel

22. UNMIN may recruit locally such personnel as it requires. Upon the request of the Special Representative, the Government undertakes to facilitate the recruitment of qualified local staff by UNMIN and to accelerate the process of such recruitment.

Currency

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

VI. Status of the members of UNMIN

Privileges and immunities

24. The Special Representative, the Deputy Special Representative of the Secretary-General, the Chief of Staff, the Chief Arms Monitor and members of UNMIN of equivalent ranks as notified by the Special Representative shall have the status specified in Sections 19 and 27 of the Convention and shall be accorded the privileges and immunities, exemptions and facilities there provided.

25. Officials of the United Nations assigned to serve with UNMIN remain officials of the United Nations entitled, subject to paragraph 29, to the privileges and immunities, exemptions and facilities set out in articles V and VII of the Convention.

26. United Nations Volunteers assigned to serve with UNMIN shall be assimilated to officials of the United Nations assigned to serve with UNMIN and shall accordingly enjoy the privileges and immunities, exemptions and facilities set out in articles V and VII of the Convention.

27. United Nations civilian police advisors and arms monitors and civilian personnel other than United Nations officials whose names are for that purpose notified to the Government by the Special Representative shall be considered as experts on mission within the meaning of article VI of the Convention and shall enjoy the privileges, immunities, exemptions and facilities set out in that article and in article VII.

28. Locally recruited personnel of UNMIN shall enjoy the immunity concerning official acts and the exemption from taxation and, subject to paragraph 29, the immunity from national service obligations provided for in Sections 18 (a), (b) and (c) of the Convention.

29. The duty of United Nations officials who are nationals of Nepal to fulfil national service obligations under the law of Nepal shall be deferred for the duration of their assignment to serve with UNMIN. The same deferment shall apply in respect of locally recruited personnel of UNMIN who are nationals of Nepal.

30. Members of UNMIN, including locally recruited personnel, shall be exempt from taxation on the pay and emoluments received from the United Nations. Members of UNMIN other than locally recruited personnel shall also be exempt from taxation on any income received from outside Nepal, as well as from all other direct taxes, except municipal rates for services enjoyed, and from all registration fees and charges.

31. Members of UNMIN shall have the right to import free of duty their personal effects in connection with their arrival in Nepal. They shall be subject to the laws and

regulations of Nepal governing customs and foreign exchange with respect to personal property not required by them by reason of their presence in Nepal with UNMIN. The Government shall, as far as possible, give priority for the speedy processing of entry and exit formalities for all members of UNMIN upon prior written notification. On departure from Nepal, members of UNMIN may, notwithstanding the above-mentioned exchange regulations, take with them such funds as the Special Representative certifies were received in pay and emoluments from the United Nations and are a reasonable residue thereof. Special arrangements shall be made for the implementation of the present provisions in the interests of the Government and the members of UNMIN.

32. The Special Representative shall cooperate with the Government and shall render all assistance within his power in ensuring the observance of the customs and fiscal laws and regulations of Nepal by members of UNMIN, in accordance with the present Agreement.

Entry, residence and departure

33. The Special Representative and members of UNMIN shall, whenever so required by the Special Representative, have the right to enter into, reside in and depart from Nepal.

34. The Government undertakes to facilitate the entry into and departure from Nepal, without delay or hindrance, of the Special Representative and members of UNMIN and shall be kept informed of such movement. For that purpose, the Special Representative and members of UNMIN shall be exempt from passport and visa regulations and immigration inspection and restrictions, as well as from payment of any taxes, fees or charges on entering into or departing from Nepal. They shall, however, complete and submit arrival and departure cards. However nothing in the present agreement shall be construed as preventing the Government from stamping into the relevant travel document of a member of UNMIN the entry or departure date whenever such member travels into or out of Nepal. Members of UNMIN shall also be exempt from any regulations governing the residence of aliens in Nepal, including registration, but shall not be considered as acquiring any right to permanent residence or domicile in Nepal.

35. For the purpose of such entry or departure, members of UNMIN shall only be required to have a personal numbered identity card issued in accordance with paragraph 36 of the present Agreement, except in the case of first entry into Nepal, when the United Nations *laissez-passer*, national passport or personal identity card issued by the United Nations shall be accepted in lieu of the said identity card. The Special Representative shall take the necessary steps to ensure that members of UNMIN departing from Nepal will carry with them valid travel documentation that will be acceptable for the purposes of their entry into their State of destination and, if applicable, for their passage through any transit State.

Identification

36. The Special Representative shall issue to each member of UNMIN before or as soon as possible after such member's first entry into Nepal, as well as to all locally recruited personnel and to UNMIN's contractors, a numbered identity card, showing the bearer's name and photograph. Except as provided for in paragraph 35 of the present Agreement, such identity card shall be the only document required of a member of UNMIN.

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

Uniforms and arms

38. United Nations Security Officers may wear the United Nations uniform. United Nations Security Officers may possess and carry firearms and ammunition while on official duty in accordance with their orders. When doing so, they must wear the United Nations uniform, except as otherwise provided in paragraph 39.

39. United Nations close protection officers and United Nations Security Officers serving in close protection details may carry firearms and ammunition and wear civilian clothes while performing their official functions.

40. UNMIN shall keep the Government informed of the number and the types of firearms carried by United Nations Security Officers and close protection officers and of the names of the officers carrying them.

Permits and licenses

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

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

43. Without prejudice to the provisions of paragraphs 38 and 39, the Government further agrees to accept as valid, without tax or fee, permits or licenses issued by the Special Representative to members of UNMIN for the carrying or use of firearms or ammunition in connection with the functioning of UNMIN.

Arrest and transfer of custody and mutual assistance

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

45. The personnel mentioned in paragraph 44 above may take into custody any other person on the premises of UNMIN. Such other person shall be delivered immediately to the nearest appropriate official of the Government for the purpose of dealing with any offence or disturbance on such premises.

46. Subject to the provisions of paragraphs 24 and 27, officials of the Government may take into custody any member of UNMIN:

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

(*b*) When such a member of UNMIN is apprehended in the commission or attempted commission of a criminal offence. Such person shall be delivered immediately, together with any item seized, to the nearest appropriate representative of UNMIN, whereafter the provisions of paragraph 52 shall apply *mutatis mutandis*.

47. When a person is taken into custody under paragraph 45 or paragraph 46 (b), UNMIN or the Government, as the case may be, may make a preliminary interrogation, but may not delay the transfer of custody. Following such transfer, the person concerned shall be made available upon request to the arresting authority for further interrogation.

48. UNMIN and the Government shall assist each other in carrying out all necessary investigations into offences in respect of which either or both have an interest, in the production of witnesses and in the collection and production of evidence, including the seizure of and, if appropriate, the handing over of items connected with an offence. The handing over of any such items may be made subject to their return on the terms specified by the authority delivering them. Each party shall notify the other of the disposition of any case in the outcome of which the other may have an interest or in which there has been a transfer of custody under the provisions of paragraphs 45 to 47.

Safety and security

49. The Government shall ensure that the provisions of the Convention on the Safety of United Nations and Associated Personnel (the "Safety Convention"), to which Nepal is a Party, are applied to and in respect of UNMIN, its members and associated personnel and their equipment and premises. In particular:

(*i*) the Government shall take all appropriate measures to ensure the safety and security of UNMIN, its members and associated personnel. It shall take all appropriate steps to protect members of UNMIN and its associated personnel and their equipment and premises from attack or any action that prevents them from discharging their mandate. This is without prejudice to the fact that all premises of UNMIN are inviolable and subject to the exclusive control and authority of the United Nations;

(*ii*) except as otherwise provided in paragraph 46, if members of UNMIN or its associated personnel are captured, detained or taken hostage in the course of the performance of their duties and their identification has been established, they shall not be subjected to interrogation and they shall be promptly released and returned to United Nations or other appropriate authorities. Pending their release such personnel shall be treated in accordance with universally recognized standards of human rights and the principles and spirit of the Geneva Conventions of 1949;

(*iii*) the Government confirms that, as a Party to the Safety Convention, it has established the following acts as crimes under its national law and made them punishable by appropriate penalties, taking into account their grave nature:

(a) a murder, kidnapping or other attack upon the person or liberty of any member of UNMIN or its associated personnel;

(b) a violent attack upon the official premises, the private accommodation or the means of transportation of any member of UNMIN or its associated 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;

(iv) the Government confirms that, as a Party to the Safety Convention, it has established its jurisdiction over the crimes set out in subparagraph (iii): (a) when the crime is committed on the territory of Nepal; (b) when the alleged offender is a national of Nepal; (c) when the alleged offender, other than a member of UNMIN, is present in the territory of Nepal;

(v) the Government shall ensure the prosecution, without exception and without delay, of persons accused of acts described in subparagraph (iii) above who are present in the territory of Nepal, as well as those persons that are subject to its criminal jurisdiction who are accused of other acts in relation to UNMIN or its members or associated personnel which, if committed in relation to the forces of the Government or against the local civilian population, would have rendered such acts liable to prosecution.

50. Upon the request of the Special Representative, the Government shall provide such security as necessary to protect UNMIN, its members and associated personnel and their equipment during the exercise of their functions.

Jurisdiction

51. All members of UNMIN, including locally recruited personnel, shall be immune from legal process in respect of words spoken or written and all acts performed by them in their official capacity. Such immunity shall continue even after they cease to be members of or employed by or for UNMIN and after the expiration of the other provisions of the present Agreement.

52. Should the Government consider that any member of UNMIN has committed a criminal offence, it shall promptly inform the Special Representative and present to him or her any evidence available to it. Subject to the provisions of paragraph 24, the Special Representative shall conduct any necessary supplementary inquiry and then agree with the Government whether or not criminal proceedings should be instituted. Failing such agreement the question shall be resolved as provided in paragraph 58 of the present Agreement. In the event that criminal proceedings are instituted in accordance with the present Agreement, the courts and authorities of Nepal shall ensure that the member of UNMIN concerned is prosecuted, brought to trial and tried in accordance with international standards of justice, fairness and due process of law, as set out in the International Covenant on

Civil and Political Rights (the "Covenant"), to which Nepal is a Party. The Government confirms that, in accordance with the Second Optional Protocol to the Covenant, to which Nepal is a Party, the death penalty has been abolished in Nepal and that accordingly no sentence of death will be imposed in the event of a guilty verdict.

53. If any civil proceeding is instituted against a member of UNMIN before any court of Nepal, the Special Representative shall be notified immediately and he shall certify to the court whether or not the proceeding is related to the official duties of such member.

(*a*) If the Special Representative certifies that the proceeding is related to official duties, such proceeding shall be discontinued and the provisions of paragraph 56 of the present Agreement shall apply.

(*b*) If the Special Representative certifies that the proceeding is not related to official duties, the proceeding may continue. In that event, the courts and authorities of Nepal shall grant the member of UNMIN concerned sufficient opportunity to safeguard his or her rights in accordance with due process of law and shall ensure that the suit is conducted in accordance with international standards of justice, fairness and due process of law, as set out in the Covenant. If the Special Representative certifies that a member of UNMIN is unable, because of his or her official duties or authorized absence, to protect his or her interests in the proceeding, the court shall, at the defendant's request, suspend the proceeding until the elimination of the disability, but for no more than ninety days. Property of a member of UNMIN that is certified by the Special Representative to be needed by the defendant for the fulfilment of his or her official duties shall be free from seizure for the satisfaction of a judgement, decision or order. The personal liberty of a member of UNMIN shall not be restricted in a civil proceeding, whether to enforce a judgement, decision or order, to compel an oath or for any other reason.

Deceased members

54. The Special Representative or the Secretary-General of the United Nations shall have the right to take charge of and dispose of the body of a member of UNMIN who dies in Nepal, as well as that member's personal property located within Nepal, in accordance with United Nations procedures.

VII. Limitations of liability of the United Nations

55. Third party claims for property loss or damage and for personal injury, illness or death arising from or directly attributed to UNMIN and which cannot be settled through the internal procedures of the United Nations shall be settled by the United Nations in the manner provided for in paragraph 56 of the present Agreement, provided that the claim is submitted within six months following the occurrence of the loss, damage or injury or, if the claimant did not know or could not reasonably have known of such loss or injury, within six months from the time he or she had discovered the loss or injury, but in any event not later than one year after the termination of the mandate of the operation. Upon determination of liability as provided in this Agreement, the United Nations shall pay compensation within such financial limitations as have been approved by the General Assembly in its resolution 52/247 of 26 June 1998.

VIII. Settlement of disputes

56. Except as provided in paragraph 58, any dispute or claim of a private law character to which UNMIN or any member thereof is a party and over which the courts of Nepal do not have jurisdiction because of any provision of the present Agreement shall be settled by a standing claims commission to be established for that purpose. One member of the commission shall be appointed by the Secretary-General of the United Nations, one member by the Government and a chairman jointly by the Secretary-General and the Government. If no agreement as to the chairman is reached within thirty days of the appointment of the first member of the commission, the President of the International Court of Justice may, at the request of either the Secretary-General of the United Nations or the Government, appoint the chairman. Any vacancy on the commission shall be filled by the same method prescribed for the original appointment, provided that the thirty-day period there prescribed shall start as soon as there is a vacancy in the chairmanship. The commission shall determine its own procedures, provided that any two members shall constitute a quorum for all purposes (except for a period of thirty days after the creation of a vacancy) and all decisions shall require the approval of any two members. The awards of the commission shall be final. The awards of the commission shall be notified to the parties and, if against a member of UNMIN, the Special Representative or the Secretary-General of the United Nations shall use his or her best endeavours to ensure compliance.

57. Disputes concerning the terms of employment and conditions of service of locally recruited personnel shall be settled by the administrative procedures to be established by the Special Representative.

58. All other disputes between UNMIN and the Government concerning the interpretation or application of the present Agreement that are not settled by negotiation shall, unless otherwise agreed by the parties, be submitted to a tribunal of three arbitrators. The provisions relating to the establishment and procedures of the claims commission set out in paragraph 56 shall apply, *mutatis mutandis*, to the establishment and procedures of the tribunal. The decisions of the tribunal shall be final and binding on both parties.

IX. Supplemental arrangements

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

X. Liaison

60. The Ministry of Foreign Affairs of the Government of Nepal shall act as the main liaison agency for all dealings between the Government of Nepal and UNMIN. The Special Representative and the Government shall take appropriate measures to ensure close and reciprocal liaison at every appropriate level.

XI. Miscellaneous provisions

61. Wherever the present Agreement refers to privileges, immunities and rights of UNMIN and to facilities Nepal undertakes to provide to UNMIN, the Government shall have the ultimate responsibility for the implementation and fulfilment of such privileges, immunities, rights and facilities by the appropriate local authorities.

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

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

(*a*) the provisions of paragraphs 49 (iii), (iv) and (v), 51, 54 and 58 shall remain in force;

(*b*) the provisions of paragraphs 55 and 56 shall remain in force until all claims made in accordance with the provisions of paragraph 55 have been settled.

64. Without prejudice to existing agreements regarding their legal status and operations in Nepal, the provisions of the present Agreement shall apply to offices, funds and programmes of the United Nations, their property, funds and assets and their officials and experts on mission that are deployed in Nepal and perform functions in furtherance of the mandate of UNMIN.

In witness whereof, the undersigned, being 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.

Done at Kathmandu, on fifth day of December two thousand and eight, in two original copies in the English language.

For the United Nations	For the Government of Nepal
[*Signed*] Ian Martin	[*Signed*] Gyan Chandra Acharya
Special Representative of the Secretary-General for Nepal	Foreign Secretary Ministry 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

During 2008, the following States acceded to the Convention.**

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

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

State	*Date of receipt of instrument of accession*	*Specialized agencies*
Vanuatu	2 January 2008	ILO, FAO (second revised text of annex II), ICAO, UNESCO, IMF, IBRD, WHO (third revised text of annex VII), UPU, ITU, WMO, IMO (second revised text of annex XII), IFC, IDO, UNIDO
Estonia	7 November 2008	FAO (second revised text of annex II), WHO (third revised text of annex VII), IMO (second revised text of annex XII), IFC (annex III), IDA (annex XIV)

As at 31 December 2008, there were 116 States parties to the Convention.

2. Food and Agriculture Organization of the United Nations

Agreement based on standard "Memorandum of responsibilities" * in respect of the Food and Agricultural Organization of the United Nations (FAO) sessions

Agreements concerning specific sessions held outside FAO Headquarters, containing provisions on privileges and immunities of FAO and participants similar to the standard text were concluded in 2008 with the governments of the following countries acting as hosts to such sessions: Afghanistan, Albania, Belgium, Brazil, Bulgaria, Chile, China, Germany, Ghana, Guatemala, Indonesia, Italy, Malaysia, Mexico, Morocco, The Netherlands, Norway, Oman, Philippines, Poland, Portugal, Republic of Korea, South Africa, Thailand, Tonga, Tunisia, Turkey, Uganda, United States of America.

3. United Nations Educational, Scientific and Cultural Organization

For the purpose of holding international conferences on the territory of Member States, the United Nations Educational, Scientific and Cultural Organization (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

* *United Nations Juridical Yearbook 1972* (United Nations publication, Sales No. E.74.V.1), p. 32.

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.

4. United Nations Industrial Development Organization

(*a*) Memorandum of Understanding between the United Nations Industrial Development Organization and the Andean Community General Secretariat (SGCAN). 26 February and 13 May 2008**

"Article 8

Privileges and immunities of UNIDO and SGCAN

Nothing in or relating to this Memorandum of Understanding shall be deemed a waiver, express or implied, of any of the privileges and immunities of UNIDO and SGCAN."

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

** Entered into force upon signature on 13 May 2008.

(*b*) Letter of Agreement between the United Nations Industrial Development Organization and the Swiss State Secretariat for Economic Affairs (SECO) concerning the project US/VIE/08/004 "Post WTO accession support to Viet Nam – TBT/SPS compliance capacity development related to key export sectors." 23 June 2008*

"Project document

H. Legal context

The provisions of the Standard Basic Assistance Agreement govern the present project. Each government has concluded this agreement with the United Nations Development Programme (UNDP). In this respect, the Socialist Republic of Viet Nam and the UNDP concluded such an agreement on 21 March 1978 in New York." **

(*c*) Memorandum of Understanding between the United Nations Industrial Development Organization and the Department of International Cooperation, Ministry of Agriculture of China on Implementation of Outcome 2.1 of the Spanish MDG Achievement Fund – Heat-Recovery in the Coal-Gangue Brick Sector. 14 and 22 July 2008***

"Article 5. Final Clauses

5. Nothing in or relating to this Memorandum of Understanding shall be deemed a waiver, express or implied, of any of the privileges and immunities of UNIDO."

(*d*) Framework Agreement on the Standards and Trade Development Facility between the World Trade Organization and the United Nations Industrial Development Organization, 19 November 2008****

"Article XIX. Privileges and immunities

Nothing in this Agreement or in any Assignment relating thereto, shall be construed as constituting a waiver of privileges or immunities of UNIDO or the WTO."

(*e*) General Conditions applicable to European Community contribution agreements with international organisations

A number of agreements between the United Nations Industrial Development Organization and the European Community were concluded, containing the following provisions:

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* Entered into force upon signature on 23 June 2008.

** Agreement between the Government of the Socialist Republic of Viet Nam and the United Nations Development Programme, New York, 21 March 1978 (UNDP/ADM/LEG/SBA/5/Rev.1).

*** Entered into force upon signature on 22 July 2008.

**** Entered into force upon signature on 19 November 2008.

"ANNEX II. GENERAL CONDITIONS APPLICABLE TO EUROPEAN COMMUNITY CONTRIBUTION AGREEMENTS WITH INTERNATIONAL ORGANISATIONS

Article 3. Liability

…

3.3. Subject to the rules governing the Organisation's privileges and immunities, the Organisation shall assume sole liability towards third parties, including liability for damage or injury of any kind sustained by them in respect of or arising out of the Action. The Organisation shall discharge the Contracting Authority of all liability associated with any claim or action brought as a result of an infringement by the Organisation or the Organisation's employees or individuals for whom those employees are responsible of rules or regulations, or as a result of violation of a third party's rights.

…

Article 6. Visibility

6.1. Unless the European Commission requests or agrees otherwise, the Organisation shall take all appropriate measures to publicise the fact that an Action has received funding from the European Union. Information given to the press, the beneficiaries of an Action, all related publicity material, official notices, reports and publications, shall acknowledge that the Action was carried out "with funding by the European Union" and shall display in an appropriate way the European logo (twelve yellow stars on a blue background).

…

It is understood that the Organisation's equipment and vehicles may routinely carry its emblem and other indications of ownership prominently displayed. In cases where equipment or vehicles and major supplies have been purchased using funds provided by the European Community, the Organisation shall include appropriate acknowledgement on such vehicles, equipment and major supplies (including display of the European logo (twelve yellow stars on a blue background)) provided that such actions do not jeopardise the Organisation's privileges and immunities and the safety and security of the Organisation's staff.

6.2. The size and prominence of the acknowledgement and European Union logo shall be clearly visible in a manner that will not create any confusion regarding the identification of the Action as an activity of the Organisation, the ownership of the equipment and supplies by the Organisation, and the application to the Action of the Organisation's privileges and immunities.

…

Article 13. Settlement of disputes

…

13.3. Nothing in this Agreement shall be interpreted as a waiver of any privileges or immunities accorded to any Party hereto by its constituent documents or international law."

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 2008, the number of Member States remained at 192.

2. Peace and Security

(*a*) Peacekeeping missions and operations

(i) *Peacekeeping operations and missions established in 2008*

No peacekeeping operations and missions were established by the Security Council in 2008.

(ii) *Changes in the mandate and/or extensions of time limits of ongoing peacekeeping operations or missions in 2008*

a. Cyprus

The United Nations Peacekeeping Force in Cyprus (UNFICYP) was established by Security Council resolution 186 (2004) of 4 March 1964. The Security Council extended, by resolution 1818 (2008), adopted on 13 June 2008, and resolution 1847 (2008), adopted on 12 December 2008, the mandate of UNFICYP until 15 December 2008 and 15 June 2009, respectively.

In resolution 1818 (2008), the Council welcomed the appointment of Tayé-Brook Zerihoun as the Secretary-General's new Special Representative to Cyprus.

b. Syria and Israel

The United Nations Disengagement Observer Force (UNDOF) was established by Security Council resolution 350 (1974) of 31 May 1974. The Security Council renewed, by

resolution 1821 (2008) of 27 June 2008, and resolution 1848 (2008) of 12 December 2008, the mandate of UNDOF until 31 December 2008 and 30 June 2009, respectively.[1]

In a letter dated 6 May 2008 from the Secretary-General to the President of the Security Council, the Secretary-General informed the Council that, having served in UNDOF since May 1998, Slovakia would withdraw its troops in July 2008 and that the Government of Croatia had offered to replace the departing Slovak contingent within the Austrian battalion. The Members of the Security Council took note of the Secretary-General's intention to add Croatia to the list of countries that had agreed to provide military personnel to UNDOF.[2]

c. Lebanon

The United Nations Interim Force in Lebanon (UNIFIL) was established by Security Council resolutions 425 (1978) and 426 (1978) of 19 March 1978. Following a request by the Government of Lebanon, presented in a letter dated 18 August 2008 from the Lebanese Prime Minister to the Secretary-General, and a recommendation by the Secretary-General,[3] the Council adopted on 27 August 2008 resolution 1832 (2008), by which it decided to extend the mandate of UNIFIL until 31 August 2009.

d. Western Sahara

The United Nations Mission for the Referendum in Western Sahara (MINURSO) was established by Security Council resolution 690 (1991) of 29 April 1991. The Council extended, by resolution 1813 (2008) of 30 April 2008, the mandate of MINURSO until 30 April 2009.

e. Georgia

The United Nations Observer Mission in Georgia (UNOMIG) was established by Council resolution 858 (1993) of 24 August 1993. By resolution 1808 (2008), adopted on 15 April 2008, and resolution 1839 (2008), adopted on 9 October 2008, the Security Council extended the mandate of UNOMIG until 15 October 2008 and 15 February 2009, respectively.

In resolution 1808 (2008), the Council welcomed the reports of the Secretary-General on the activities of the United Nations Observer Mission in Georgia of 23 January 2008[4] and 2 April 2008[5] respectively, and requested the Secretary-General to make use of this mandate in order to encourage and support the parties in implementing measures to build confidence and to establish an intensive and meaningful dialogue, with a view to achiev-

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[1] Report of the Secretary-General on the United Nations Disengagement Observer Force (S/2008/737).

[2] Exchange of letters between the President of the Security Council and the Secretary-General (S/2008/306 and S/2008/307).

[3] Letter from the Secretary-General addressed to the President of the Security Council, dated 21 August 2008 (S/2008/568).

[4] S/2008/38.

[5] S/2008/219.

ing a lasting and comprehensive settlement, including the facilitation of a meeting at the highest level.

In resolution 1839 (2008), the Council took note of the Secretary-General reports dated 23 July 2008[6] and 3 October 2008[7] on the situation in Abkhazia.

f. Democratic Republic of the Congo

The United Nations Organization Mission in the Democratic Republic of the Congo (MONUC) was established by Security Council resolution 1279 of 30 November 1999. The Council extended, by resolution 1843 (2008), adopted on 20 November 2008, and resolution 1856 (2008), adopted on 22 December 2008, the mandate of MONUC until 31 December 2008 and 31 December 2009, respectively.

On 30 January 2008, the Security Council adopted resolution 1797 (2008) authorizing MONUC, in close coordination with international partners and the United Nations Country Team, to provide assistance to the Congolese authorities, including the National Independent Electoral Commission, in the organization, preparation and conduct of local elections, as recommended in the letter from the Secretary-General dated 11 October and 30 November 2007.[8]

In resolution 1843 (2008), the Security Council, taking note of the recommendation of the Secretary-General in his letter dated 31 October 2008,[9] decided to temporarily increase MONUC authorized military strength by up to 2,785 military personnel and the strength of its formed police unit by up to 300 personnel, and authorized the immediate deployment of those additional capacities.

In its resolution 1856 (2008), after taking note of the fourth special report[10] of the Secretary-General on MONUC dated 21 November 2008 and the recommendations contained therein, the Security Council authorized the continuation until 31 December 2009 of up to 19,815 military personnel, 760 military observers, 391 police personnel and 1,050 personnel of formed police units.

In addition, the Council decided that MONUC would have the mandate, *inter alia*, and in this order of priority, to work in close cooperation with the Government of the Democratic Republic of the Congo, to protect civilians, humanitarian personnel and United Nations personnel and facilities, to disarm, demobilize, monitor resources of foreign and Congolese armed groups and to train and mentor the Armed Forces of the Democratic Republic of the Congo (FARDC) in support of security sector reform.

In the same resolution, Security Council decided that MONUC would also have the mandate to support the strengthening of democratic institutions and the rule of law in close cooperation with the Congolese authorities, the United Nations Country Team and donors by, *inter alia*, providing advice to strengthen democratic institutions and processes at the national, provincial, regional and local levels, promoting national reconciliation

[6] S/2008/480.

[7] S/2008/631.

[8] S/2007/694.

[9] S/2008/703.

[10] S/2008/728.

and internal political dialogue, assist in the promotion and protection of human rights, with particular attention to women, children and vulnerable persons, investigating human rights violations, assisting in the development and implementation of a transitional justice strategy, and cooperating in national and international efforts to bring to justice perpetrators of grave violations of human rights and international humanitarian law.

g. Ethiopia and Eritrea[11]

The United Nations mission in Ethiopia and Eritrea (UNMEE) was established by Security Council resolution 1312 (2000) of 31 July 2000. The Council extended, by resolution 1798 (2008), adopted on 30 January 2008, the mandate of UNMEE for a period of six months, until 31 July 2008.

In a Presidential Statement dated 30 April 2008, the Security Council noted that the continuation of Eritrea's obstructions towards UNMEE had reached a level that undermined the basis of the mission's mandate, and had compelled UNMEE to temporarily relocate.[12] In a letter to the President of the Security Council dated 5 June 2008, the Secretary-General proposed that the temporarily relocated troops be considered as repatriated while pending a decision of the Security Council on this issue, in the light of consultations with the parties. In a letter dated 30 June 2008, the President of the Security Council informed the Secretary-General that the members of the Council agreed with that proposal.[13]

In a letter dated 28 July 2008 from the Secretary-General addressed to the President of the Security Council, the Secretary-General reported on the Secretariat's consultations with the parties as to the terms of a future United Nations engagement and on the future of UNMEE.[14]

In a letter dated 2 October 2008 from the Secretary-General addressed to the President of the Security Council, the Secretary-General brought to the attention of the Council the final report of the Eritrea-Ethiopia Boundary Commission.[15] The Commission was established pursuant to the Agreement of 12 December 2000 between the Government of the State of Eritrea and the Government of the Federal Democratic Republic of Ethiopia, with the mandate to delimit and demarcate the colonial treaty border based on pertinent colonial treaties and applicable international law.

h. Liberia

The United Nations Mission in Liberia (UNMIL) was established by Security Council resolution 1509 (2003) of 19 September 2003. The Security Council decided, in resolu-

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[11] See further, regarding UNMEE, under the section concerning the conclusion of peacekeeping missions, below.

[12] S/PRST/2008/12.

[13] Exchange of letters between the President of the Security Council and the Secretary-General, dated 5 June 2008 and 30 June 2008, respectively (S/2008/368 and S/2008/427).

[14] Letter dated 28 July 2008 from the Secretary-General addressed to the President of the Security Council (S/2008/496).

[15] Letter from the Secretary-General to the President of the Security Council and the twenty-seventh report of the Eritrea-Ethiopia Boundary Commission (S/2008/630).

tion 1836 (2008), adopted on 29 September 2008, to extend the mandate of UNMIL until 30 September 2009.

In the same resolution, endorsed the Secretary-General's recommendation[16] for a reduction of an additional 1,460 personnel deployed as part of UNMIL military component and for the streamlining of the current four sectors into two, authorized the him to implement that recommendation during the period October 2008 to March 2009.

In addition, the Council approved, with immediate effect, the Secretary-General's recommendation for an increase of 240 in the authorized number of personnel deployed as part of UNMIL police component in order to, *inter alia*, provide strategic advice and expertise in specialized fields, provide operational support to regular policing activities and react to urgent security incidents.

Furthermore, the Secretary-General was requested, *inter alia*, to continue to monitor progress on the core benchmarks detailed in paragraph 66 of his report of 8 August 2007[17] and his report of 19 March 2008,[18] to include in his report long-range scenarios for a phased drawdown and withdrawal of UNMIL troop contingent, as the situation would permit and without compromising the security of Liberia. The Council also requested the Secretary-General to develop further detailed benchmarks to measure and track progress towards the achievement of security in Liberia.

i. Côte d'Ivoire

The United Nations Operation in Côte d'Ivoire (UNOCI) was established by Security Council resolution 1528 (2004) of 27 February 2004. The Security Council, by resolution 1795 (2008), adopted on 15 January 2008, and resolution 1826 (2008), adopted on 29 July 2008, extended the mandate of UNOCI and the mandate of the French forces which support it until 30 July 2008, respectively.

In its resolution 1795 (2008), the Security Council recalled that the Special Representative of the Secretary-General in Côte d'Ivoire shall certify that all stages of the electoral process would provide all the necessary guarantees for the holding of open, free, fair and transparent presidential and legislative elections in accordance with international standards.

In resolution 1826 (2008) of 29 July 2008, the Security Council, having taken note of the report of the Secretary-General dated 10 July 2008,[19] requested UNOCI to support the full implementation of the Ouagadougou Political Agreement and its Supplementary Agreements, in particular to contribute to bringing the security needed by the peace process and by the electoral process and to provide logistical support to the Independent Electoral Commission for the preparation and the holding of the elections.

Furthermore, it strongly encouraged the Defense and Security Force of Côte d'Ivoire and the Forces Nouvelles to jointly develop a comprehensive plan for the security of the

[16] For more information, see report of the Secretary-General dated 15 August 2008 (S/2008/553).

[17] S/2007/479.

[18] S/2008/183.

[19] S/2008/451.

elections, in close coordination with the Facilitator, with the technical and logistical support of UNOCI.

j. Haiti

The United Nations Stabilization Mission in Haiti (MINUSTAH) was established by the Security Council in its resolution 1542 of 30 April 2004. The Security Council adopted on 14 October 2008 resolution 1840 (2008), by which it decided to extend the mandate of MINUSTAH until 15 October 2009.

In the same resolution, the Council expressed its satisfaction with the reconfiguration of the Mission carried out in accordance with resolution 1780 (2007), and decided that MINUSTAH will continue to 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 police.[20]

k. The Sudan

The United Nations Mission in the Sudan (UNMIS) was established by Security Council resolution 1590 (2005) of 24 March 2005. On 30 April 2008, the Council adopted resolution 1812 (2008) by which it extended the mandate of UNMIS until 30 April 2009.

l. Timor-Leste

The United Nations Integrated Mission in Timor-Leste (UNMIT) was established by Security Council resolution 1704 (2006) of 25 August 2006. The Council extended, by its resolution 1802 (2008) of 25 February 2008, the mandate of UNMIT until 26 February 2009.

m. Chad and the Central African Republic

The United Nations Mission in the Central African Republic and Chad (MINURCAT) was established by Security Council resolution 1778 (2007) of 25 September 2007. The Security Council extended, by resolution 1834 (2008), adopted on 24 September 2008, the mandate of MINURCAT until 15 March 2009.

In the same resolution, the Council expressed its intention to extend beyond 15 March 2009 the multidimensional presence established in Chad and the Central African Republic to help create the security conditions conducive to a voluntary, secure and sustainable return of refugees and displaced persons.

To this end, the Council expressed its intention to authorize the deployment of a United Nations military component to follow up EUFOR Chad/CAR in both Chad and the Central African Republic. The Council further requested the Secretary-General to submit a report on the progress towards the full deployment of MINURCAT and the *Détachement Intégré de Sécurité* (DIS) and on updating the planning and conducting preparations of the proposed United Nations military presence in the north-eastern Central African Republic to take over EUFOR presence, including options on its size, structure and mandate.

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[20] See, for further information, the report of the Secretary-General on the United Nations Stabilization Mission in Haiti dated 27 August 2008, paragraph 20 (S/2008/586).

(iii) *Other ongoing peacekeeping operations or missions in 2008*

During 2008, 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 (1848) 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.[21]

(iv) *Peacekeeping operations or missions concluded in 2008*

Ethiopia and Eritrea

The United Nations mission in Ethiopia and Eritrea (UNMEE) was established by Security Council resolution 1312 (2000) of 31 July 2000. The Council, by resolution 1827 (2008) of 30 July 2008, decided to terminate UNMEE mandate on 31 July 2008.

(*b*) Political and peacebuilding missions

(i) *Political and peacebuilding missions established in 2008*

a. Sierra Leone

On 4 August 2008, the Security Council adopted resolution 1829 (2008) by which it requested the Secretary-General to establish the United Nations Integrated Peacebuilding Office in Sierra Leone (UNIPSIL), as recommended in his report,[22] for a period of 12 months beginning on 1 October 2008. UNIPSIL was requested to focus on and support the Government of Sierra Leone in the following areas: providing political support to national and local efforts for identifying and resolving tensions and threats of potential conflict; monitoring and promoting human rights, democratic institutions and the rule of law, including efforts to counter transnational organized crime and drug trafficking; consolidating good governance reforms with special focus on anti-corruption instruments such as the Anti-Corruption Commission; supporting decentralization, reviewing the 1991 Constitution and the enactment of relevant legislation; and closely coordinating with and supporting the work of the Peacebuilding Commission, as well as the implementation of the Peacebuilding Cooperation Framework and projects supported through the Peacebuilding Fund; and closely coordinating with and supporting the work of the Peacebuilding Commission, as well as the implementation of the Peacebuilding Cooperation Framework and projects supported through the Peacebuilding Fund.

The Security Council further stressed the importance of a smooth transition between the United Nations Integrated Office in Sierra Leone (UNIOSIL) and the new UNIPSIL, and of the effective and efficient operation of the Office.

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[21] Report of the Secretary-General on UNMIK, dated 24 November 2008 (S/2008/692).

[22] S/2008/281.

In its resolution 1793 (2007), the Council requested the Secretary-General to submit for its consideration a completion strategy for UNIOSIL that would include, *inter alia*, at least a 20 per cent reduction in staff by 31 March 2008, a continued mission at 80 per cent of the strength as at 21 December 2007 until 30 June 2008, and the termination of the UNIOSIL mandate by 30 September 2008. The Secretary-General submitted to the Security Council the completion strategy for UNIOSIL in its letter dated 1 February addressed to the President of the Security Council. The Council took note of the submission in a letter dated 28 February 2008.[23]

b. Djibouti and Eritrea

Following clashes between the Djibouti Armed Forces and Eritrean Defence Forces along the undemarcated border between Djibouti and Eritrea known as Doumeira, and a statement made by the President of the Security Council on 12 June 2008,[24] the Secretary-General directed the Department of Political Affairs to dispatch a fact-finding mission to Eritrea and Djibouti.

The fact-finding mission visited Djibouti and Ethiopia from 28 July to 6 August 2008. The mission did not obtain approval from the Eritrean authorities to visit Eritrea, and as a result, the terms of reference of the mission were amended. The mandate of the fact-finding mission was, *inter alia*, to achieve a better understanding of critical aspects like the state of relations between Djibouti and Eritrea (both past and present), including an appreciation of the series of conventions, treaties and protocols that defined the frontier between the two territories at different points in the nineteenth and twentieth centuries; the chronology of events that led to the clashes of 10 to 12 June; the current military, security and humanitarian situation in the border area; and the efforts undertaken by the African Union, the League of Arab States and the African, Caribbean and Pacific Group of States to defuse the tension and create an enabling environment for dialogue between the two States.

The report of the fact-finding mission was transmitted to the Security Council through a letter from the Secretary-General on 12 September 2008.[25]

(ii) *Changes in the mandate and/or extensions of the time limits of ongoing political and peacebuilding missions in 2008*

a. Somalia

The United Nations Political Office for Somalia (UNPOS) was created by the Secretary-General on 15 April 1995, to advance the cause of peace and reconciliation through contacts with Somali leaders, civic organizations and the States and organizations concerned.

On 15 May 2008, acting under Chapter VII of the Charter, the Security Council adopted resolution 1814 (2008), in which it welcomed the report presented by the Secre-

[23] Exchange of letters between the Secretary-General and the President of the Security Council (S/2008/63 and S/2008/137).

[24] S/PRST/2008/20.

[25] S/2008/602.

tary-General,[26] in particular its assessment of renewed opportunities for increased United Nations presence and the deployment of a United Nations peacekeeping operation to succeed the African Union Mission to Somalia (AMISOM). Furthermore, the Security Council approved the joint planning unit in the office of the Special Representative of the Secretary-General proposed by the Secretary-General.

In the same resolution, the Security Council decided that UNPOS and the United Nations country team should, in promoting a comprehensive and lasting settlement in Somalia and through the promotion of the ongoing political process, enhance their support to the Transitional Federal Institutions (TFIs) with the aim of developing a constitution and holding a constitutional referendum and free and democratic elections in 2009, as required by the Transitional Federal Charter (TFC).

Furthermore, the Secretary-General was requested by Security Council to establish an effective capacity within UNPOS to monitor and enhance the protection of human rights in Somalia, and to ensure coordination, as appropriate, between UNPOS, the Office of the High Commissioner for Human Rights and the Human Rights Council Independent Expert.

In a presidential statement of 4 September 2008,[27] the Security Council requested the Secretary-General to elaborate on contingency plans and to provide, in consultation with the parties and other relevant stakeholders, a detailed and consolidated description of a feasible multinational force. The Secretary-General responded to Security Council's request by submitting a report dated 17 November 2008,[28] in which it provided details on the status of contingency planning for the possible deployment of a United Nations peacekeeping operation, the multinational force, as well as the international stabilization force capabilities.

b. Guinea-Bissau

The United Nations Peacebuilding Support Office in Guinea-Bissau (UNOGBIS) was established, with the support of the Security Council, by the Secretary-General in March 1999.[29] On 10 December 2008, in a letter addressed to the President of the Security Council, the Secretary-General recommended that the mandate of UNOGBIS be extended for an additional year until 31 December 2009. The Council took note of the Secretary-General's recommendation.[30]

The Secretary-General further reaffirmed his recommendation to transform UNOGBIS into an integrated mission, and informed the Council of his intention to deploy a technical assessment mission in the first quarter of 2009 to consult on integration-related strategies.

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[26] S/2008/178.

[27] S/PRST/2008/33.

[28] S/2008/709.

[29] 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).

[30] Exchange of letters between the Secretary-General and the President of the Security Council dated 28 November and 3 December 2007 (S/2008/777 and S/2008/778).

c. 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.[31] In his report of 28 November 2008 the Secretary-General recommended that the mandate of BONUCA be extended for an additional year, until 31 December 2009.[32]

d. Afghanistan

The United Nations Assistance Mission in Afghanistan (UNAMA) was established by Security Council resolution 1401 (2002) of 28 March 2002. In its resolution 1806 (2008) of 20 March 2008, the Security Council decided to extend the mandate of UNAMA until 23 March 2009.

e. Iraq

The United Nations Assistance Mission for Iraq (UNAMI) was established by the Security Council in resolution 1500 (2003) of 14 August 2003. Welcoming the letter of 4 August 2008 from the Minister of Foreign Affairs of Iraq to the Secretary-General,[33] the Security Council decided by resolution 1830 (2008), adopted on 7 August 2008, to extend the mandate of UNAMI for another period of twelve months. The Council further decided that the Special Representative of the Secretary-General and UNAMI would continue to pursue their expanded mandate as stipulated in resolution 1770 (2007).

In a letter dated 12 December 2008 to the President of the Security Council, the Secretary-General noted the United Nations relied for the purpose of security and logistical support on the multinational forces in Iraq, pursuant to the authority granted to it by Security Council resolution 1546 (2004) of 8 June 2004 and subsequent relevant resolutions. As the agreement between the United Nations and the Government of the United States of America containing detailed arrangements concerning the provision of that security support would expire on 31 December 2008, the Secretary-General expressed his intention to negotiate an amended agreement for the provision of security support by the United States forces in Iraq, should the authorization of the multinational forces not be renewed by the Security Council. In a letter dated 16 December 2008, Security Council welcomed the proposed arrangements set out by the Secretary-General.[34]

On 22 December 2008, the Security Council adopted resolution 1859 (*2008*), in which it decided to extend until 31 December 2009 the arrangements established in resolution 1483 (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) for the monitoring of the Development Fund for Iraq by the International Advisory and Monitoring Board.

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[31] Ninth report of the Secretary-General on the United Nations Mission in the Central African Republic, dated 14 January 2000 (S/2000/24), and Statement by the President of the Security Council, dated 10 February 2000 (S/PRST/2000/5).

[32] S/RES/2008/733.

[33] S/2008/523 and annex.

[34] Exchange of letters between the Secretary-General and President of the Security Council (S/2008/783 and S/2008/784).

In the same resolution, the Security Council decided that, subject to some exceptions,[35] petroleum, petroleum products, and natural gas originating in Iraq would continue to be immune from legal proceedings against them and not be subject to any form of attachment, garnishment, or execution, including with respect to defined funds and financial assets and economic resources,[36] until 31 December 2009. The Security Council decided that the provisions for the deposit of proceeds into the Development Fund for Iraq and for the role of the International Advisory and Monitoring Board and the provisions of resolution 1483 (2003) should be reviewed at the request of the Government of Iraq[37] or no later than 15 June 2009.

f. Liberia

The Security Council established the United Nations Mission in Liberia (UNMIL) by its resolution 1509 (2003) of 19 September 2003. The Council adopted resolution 1819 on 18 June 2008 and resolution 1854 on 19 December 2008, by which it extended the mandate of the Panel of Experts, established pursuant to resolution 1760 (2007), until 20 December 2008 and 20 December 2009, respectively.

g. The Sudan

In 15 October 2008, the Security Council adopted resolution 1841 (2008), by which it decided to extend until 15 October 2009 the mandate of the current Panel of Experts, originally appointed pursuant to resolution 1591 (2005). The Panel of Experts was requested to provide, no later than 29 March 2009, a midterm briefing on its work and, no later than 90 days after adoption of this resolution, an interim report to the Committee.[38] Furthermore, the Council requested the Panel of Experts to coordinate its activities as appropriate with the operations of the African Union/United Nations Hybrid operation in Darfur (UNAMID).

The Secretary-General was requested by the Security Council to take the necessary administrative measures related to the appointment of five experts to serve on the Panel of Experts until 15 October 2009. In a letter dated 26 November 2008, from the Secretary-General addressed to the President of the Security Council,[39] the Secretary-General appointed Abdelaziz Abdelaziz (United States of America), Awni Al-Momani (Jordan), Enrico Carisch (Switzerland), Bernard Stuart Saunders (Canada), and Kuldip Sharma (India) to serve as experts on the Panel of Experts. The Secretary-General furthermore designated Mr. Carisch to serve as Coordinator of the Panel of Experts.

h. Sierra Leone

The United Nations Integrated Office in Sierra Leone (UNIOSIL) was established by Security Council resolution 1620 (2005) of 31 August 2005.

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[35] See paragraph 27 of resolution 1546 (2004).

[36] See paragraphs 22 and 23 of resolution 1483 (2003).

[37] Annexed to Security Council resolution 1859 of 22 December 2008.

[38] Established pursuant to paragraph 3 (a) of Security Council resolution 1591 (2005).

[39] S/2008/743.

In 2007, the Security Council adopted resolution 1793 (2007) in which it requested the Secretary-General to submit for its consideration a completion strategy which would include the termination of the UNIOSIL mandate by 30 September 2008. By a letter dated 1 February 2008, the Secretary-General submitted the completion strategy to the Security Council.[40] In a letter dated 28 February 2008, the President of the Security Council informed the Secretary-General that the Security Council had taken note of the completion strategy, and welcomed the action taken by UNIOSIL to provide details of the reduction in number of staff by 31 March 2008.

In resolution 1829 (2008) Security Council stressed the importance of a smooth transition between UNIOSIL and the new UNIPSIL, and of the effective and efficient operation of the Office.

i. Burundi

The United Nations Integrated Office in Burundi (BINUB) was established, for an initial period of 12 months commencing on 1 January 2007, by Security Council resolution 1719 (2006), adopted on 25 October 2006. Having considered the fourth report[41] of the Secretary-General on BINUB, the Council adopted resolution 1858 (2008) on 22 December 2008, in which it decided to extend the mandate of BINUB until 31 December 2009.

In addition, in resolution 1858 (2008), the Security Council requested the Peacebuilding Commission, with support from BINUB and the United Nations Country Team, to continue to assist the Government of Burundi in laying the foundations for sustainable peace and security and long-term development and urged BINUB to strengthen current provisions for cooperation with the United Nations Organization Mission in the Democratic Republic of the Congo (MONUC).

j. Nepal

The United Nations Political Mission in Nepal (UNMIN)[42] was established pursuant to Security Council resolution 1740 (2007) of 23 January 2007, for an initial period of twelve months, under the leadership of a Special Representative of the Secretary-General.

In resolution 1796 (2008) of 23 January 2008, and resolution 1825 (2008) of 23 July 2008, the Security Council decided, following a request from the Government of Nepal,[43] and based on the Secretary-General's recommendation,[44] to renew the mandate of UNMIN until 23 July 2008 and 23 January 2009, respectively.

In resolution 1796 (2008), the Secretary-General was requested by the Council to review the activities of UNMIN in light of the elections scheduled for 10 April 2008, taking into account the views of the Government of Nepal.

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[40] S/2008/63.

[41] S/2008/745.

[42] 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).

[43] Letters from the Government of Nepal dated 18 December 2007 and 22 July 2008 (S/2007/789 and annex, and S/2008/476 and annex).

[44] Report of the Secretary-General on UNMIN dated 3 January 2008 (S/2008/5).

In resolution 1825 (2008), the Security Council called upon the Government of Nepal to continue to take the necessary decisions to created conditions conducive to completion of UNMIN activities by the end of the current mandate, including through implementation of the 25 June Agreement, in order to facilitate UNMIN withdrawal from Nepal.

k. Uganda and affected areas

The temporary Liaison Office for the Special Envoy for the Lord's Resistance Army (LRA)-affected areas in Uganda was in 2007 upgraded to a special political mission.[45] In a letter dated 23 December 2008, the Secretary-General recommended that the mandate of the Office of its Special Envoy for the LRA-affected areas in Uganda be extended for an additional year, until 31 December 2009, and that it inherit its existing mandate as a special political mission.[46] In a letter dated 29 December 2008 from the President of the Security Council, the Secretary-General was informed that the Security Council had taken note of his recommendaton.[47]

(iii) *Other ongoing political and peacebuilding missions in 2008*

The Office of the United Nations Special Coordinator for the Middle East (UNSCO), established by the Secretary-General on 1 October 1999,[48] continued operating through 2008.

The United Nations Office for West Africa (UNOWA), established by the Secretary-General for an initial period of three years from January 2002,[49] continued operating through 2008.[50]

The Cameroun-Nigeria Mixed Commission was established by the Secretary-General to facilitate the implementation of the 10 October 2002 ruling of the International Court of Justice on the Cameroon/Nigeria boundary dispute. In a letter dated 3 December 2008, from the Secretary-General addressed to the President of the Security Council,[51] the Secretary-General referred to his letter dated 30 November 2007 in which he expressed his intention to continue the activities of the United Nations support team to the Mixed Commission with funding from the regular budget. He also referred to a letter dated 5 December 2007 in which the Security Council took note of that intention.[52]

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[45] S/2007/719.

[46] S/2008/826.

[47] S/2008/827.

[48] Exchange of letters between the Secretary-General and the President of the Security Council, 10 and 16 September 1999 (S/1999/983 and S/1999/984).

[49] Exchange of letters between the Secretary-General and the President of the Security Council, 26 and 29 November 2001 (S/2001/1128 and S/2001/1129).

[50] For further information, see exchange of letters between the Secretary-General and the President of the Security Council dated 21 February 2008 and 26 February 2008 (S/2008/127 and S/2008/128).

[51] S/2008/756.

[52] Exchange of letters between the Secretary-General and the President of the Security Council dated 30 November 2007 and 5 December 2007, respectively (S/2007/695 and S2007/710).

(iv) *Political and peacebuilding missions concluded in 2008*

No political or peacebuilding missions were concluded in 2008.

(*c*) Other peacekeeping matters

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

On 11 September 2008, at its sixty-second session, the General Assembly adopted its resolution 62/273 (2008) entitled "Comprehensive review of the whole question of peacekeeping operations in all their aspects". In that resolution, the Assembly welcomed the report of the Special Committee of Peacekeeping Operations,[53] endorsed the proposals, recommendations and contained in paragraphs 15 to 199 of its report, 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*

On 19 June 2008, the Security Council adopted resolution 1820 (2008), in which it noted that civilians account for the vast majority of those adversely affected by armed conflict, that women and girls are particularly targeted by the use of sexual violence, including as a tactic of war to humiliate, dominate, instil fear in, disperse and/or forcibly relocate civilian members of a community or ethnic group, and that sexual violence perpetrated in this manner may in some instances persist after the cessation of hostilities. The Security Council condemned all sexual and other forms of violence committed against civilians in armed conflict, in particular women and children, and welcomed the ongoing coordination of efforts within the United Nations system, marked by the inter-agency initiative "United Nations Action against Sexual Violence in Conflict," to create awareness about sexual violence in armed conflicts and post-conflict situations.

The Security Council further stressed that the Peacebuilding Commission could play an important role by including in its advice and recommendations for post-conflict peacebuilding strategies, ways to address sexual violence committed during and in the aftermath of armed conflict, and in ensuring consultation and effective representation of women's civil society in its country-specific configurations, as part of its wider approach to gender issues. The Secretary-General and his Special Envoys were requested to invite women to participate in discussions pertinent to the prevention and resolution of conflict, the maintenance of peace and security, and post-conflict peacebuilding, and encourage all parties to such talks to facilitate the equal and full participation of women at decision-making levels.

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[53] See *Official Records of the General Assembly, Sixty-second Session, Supplement No. 19*, A/62/19.

(iii) *Criminal accountability of United Nations officials and experts on mission*[54]

In resolution 1820 (2008), the Security Council requested the Secretary-General to, in consultation with the Security Council and the Special Committee on Peacekeeping Operations and its Working Group, to develop and implement appropriate training programs for all peacekeeping and humanitarian personnel deployed by the United Nations in the context of missions as mandated by the Council to help them better prevent, recognize and respond to sexual violence and other forms of violence against civilians and relevant States. The Council also requested the Secretary-General to continue and strengthen efforts to implement the policy of zero tolerance of sexual exploitation and abuse in United Nations peacekeeping operations. Troop and police contributing States were requested to take appropriate preventative action, including pre-deployment and in-theater awareness training, and other action to ensure full accountability in cases of such conduct involving their personnel.

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

Changes in authorization and/or extension of time limits in 2008

a. Somalia

The Security Council adopted resolution 1801 (2008) on 20 February 2008 and resolution 1831 (2008) on 19 August 2008, in which it decided to renew the authorization of member States of the African Union to maintain a mission in Somalia (AMISOM), for a further period of six months, respectively.

In both resolutions, authorization was given by the Council to AMISOM, to take all necessary measures to carry out its mandate, *inter alia*, measures to provide security for key infrastructure and to contribute to the creation of the necessary security conditions for the provision of humanitarian assistance.

In resolution 1801 (2008), the Council recalled the report of the Secretary-General[55] to the Security Council on the development of contingency plans for the possible deployment of a United Nations peacekeeping operation to succeed AMISOM.

In resolution 1831 (2008), the Secretary-General was encouraged by the Security Council to continue to explore with the African Union Commission Chairperson ways and means to strengthen United Nations logistical, political and technical support for the African Union, to build the African Union's institutional capacity to carry out its commitments in addressing the challenges it faces in supporting AMISOM, and to assist AMISOM full deployment, to the extent possible, and, in this regard, took note of the proposals set out in the report of the Secretary-General on Somalia.[56]

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[54] For further information about this topic, see Section 16 (b) of this chapter.

[55] S/2008/466.

[56] *Ibid.*

b. The Sudan

The African Union/United Nations Hybrid operation in Darfur (UNAMID) was authorized by Security Council resolution 1769 of 31 July 2007. The Council adopted resolution 1828 (2008) of 31 July 2008, by which it extended the mandate of UNAMID for a further 12 months until 31 July 2009.

c. Afghanistan

In its resolution 1833 (2008) adopted on 22 September 2008, the Security Council, decided to extend the authorization of the International Security Assistance Force (ISAF), as defined in resolutions 1386 (2001) and 1510 (2003), for a period of 12 months beyond 13 October 2008, and it further authorized the Member States participating at ISAF to take all necessary measures to fulfil its mandate.[57]

d. Bosnia and Herzegovina

The Security Council, by resolution 1845 (2008) of 20 November 2008, decided to extend the authorization of Member States, acting through or in cooperation with the European Union (EU), to establish for a further period of 12 months a multinational stabilization force (EUFOR) as a legal successor to the Stabilization Force in Bosnia and Herzegovina (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[58] (the Peace Agreement), in cooperation with the North Atlantic Treaty Organization (NATO) presence and in accordance with the arrangements agreed between NATO and the European Union, as communicated to the Security Council in their respective letters of 19 November 2004,[59] which recognized that EUFOR would have the main peace stabilization role under the military aspects of the Peace Agreement. The Council further requested member States acting through or in cooperation with the European Union and the member States acting through or in cooperation with NATO to report to the Council on the activity of EUFOR and NATO Headquarters presence.[60]

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[57] For further information, see quarterly reports to the United Nations on the operations of the International Security Assistance Force (S/2008/319, S/2008/597 and S/2008/770).

[58] General Framework Agreement for Peace in Bosnia and Herzegovina and the annexes thereto, (S/1995/999, annex).

[59] Exchange of letters between the High Representative of the EU and the Secretary-General of NATO annexed to the letter from the Permanent Representative of the Netherlands to the United Nations to the President of the Security Council dated 19 November 2004 (S/2004/915) and letter from the Chargé d'affaires a.i. of the Permanent Mission of Germany to the United Nations addressed to the President of the Security Council (S/2004/916).

[60] For further information, see the exchange of letters between the President of the Security Council and the Secretary-General of 11 April 2008, 23 June 2008, 25 November 2008 and 30 December 2008, respectively (S/2008/242, S/2008/413, S/2008/732 and S/2008/838).

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

(i) *Democratic Republic of the Congo*

On 15 February 2008, the Security Council adopted resolution 1799 (2008), in which it decided, acting under Chapter VII of the Charter, to extend until 31 March 2008 the measures on arms imposed by paragraph 20 of resolution 1493 (2003) as amended and expanded by paragraph 1 of resolution 1596 (2005). The measures on transport imposed by paragraphs 6, 7 and 10 of resolution 1596 (2005) and the financial and travel measures imposed by paragraphs 13 and 15 of resolution 1596 (2005), paragraph 2 of resolution 1649 (2005) and paragraph 13 of resolution 1698 (2006) were extended for the same period. The Security Council furthermore decided to extend for the same period the mandate of the Group of Experts referred to in paragraph 9 of resolution 1771 (2007).

On 31 March 2008 the Security Council adopted resolution 1807 (2008), in which the Council decided, acting under Chapter VII of the Charter, that all States shall take the necessary measures to prevent the direct or indirect supply, sale or transfer, from their territories or by their nationals, or using their flag vessels or aircraft, of arms and any related material for a further period ending on 31 December 2008. This measure included the provision of any assistance, advice or training related to military activities, including financing and financial assistance, to all non-governmental entities and individuals operating in the territory of the Democratic Republic of the Congo, but would exclude the supply, sale, or transfer related to military activities to the Government of the Democratic Republic of the Congo. Furthermore, the Council decided that the measures on arms would not apply, *inter alia*, to supplies of arms and related *matériel* as well as technical training and assistance intended for support of or use by MONUC. The mandate of the Group of Experts referred to in paragraph 9 of resolution 1771 (2007) was also extended for a period expiring on 31 December 2008.

In resolution 1857 (2008), adopted on 22 December 2008, the Security Council decided to renew until 30 November 2009 the measures on arms, the measures on transport and the financial and travel measures imposed by resolution 1807 (2008). The Council furthermore decided that the measures referred to in the resolution should apply to the list of individuals and entities, as designated by the Committee referred to in paragraph 7 of Security Council resolution 1771 (2007). The Committee's mandate was extended for a further period ending on 30 November 2009.

(ii) *Somalia*

On 29 April 2008, the Security Council adopted resolution 1811 (2008), in which it took note of the observations and recommendations contained in the report[61] of the Monitoring Group referred to in paragraph 3 of resolution 1558 (2007), and, acting under Chapter VII of the Charter, decided to extend the mandate of the Monitoring Group for a further six months.

[61] S/2008/274.

In resolution 1853 (2008), adopted on 19 December 2008, the Security Council, acting under Chapter VII of the Charter, took note of the of the report of the Monitoring Group dated 10 December 2008,[62] stressed the obligation of all States to comply fully with the measures imposed by resolution 733 (1992) and decided to extend for a period of twelve months the mandate of the Monitoring Group referred to in resolution 1558 (2004). The mandate of the Monitoring Group was extended to include, *inter alia*, to continue to investigate, in coordination with relevant international agencies, all activities, including in the financial, maritime and other sectors, which generate revenues used to commit arms embargo violations; and to continue to investigate any means of transport, routes, seaports, airports and other facilities used in connection with arms embargo violations. The Monitoring Group was furthermore requested to, *inter alia*, continue refining and updating information on the draft list of those individuals and entities that violate the measures implemented by member States; and to assist in identifying areas where the capacities of States in the region can be strengthened to facilitate the implementation of the arms embargo.

(iii) *Rwanda*

On 10 July 2008, the Security Council adopted resolution 1823 (2008), in which, acting under Chapter VII of the Charter, it decided to terminate the prohibitions imposed by resolution 1011 (1995) concerning the sale and supply of arms and related *matériel* to non-governmental forces for use in Rwanda and the reselling, transfer or making available for use or arms or related *matériel* sold or supplied to the Government of Rwanda. The Security Council further decided to dissolve the Committee established pursuant to resolution 918 (1994) concerning Rwanda.

(iv) *Côte d'Ivoire*

In its resolution 1842 (2008) of 29 October 2008 on the situation in Côte d'Ivoire, the Security Council, acting under Chapter VII of the Charter, decided to renew until 31 October 2009 the measures on arms and the financial and travel measures imposed by paragraphs 7 to 12 of resolution 1572 (2004) and the measures preventing the importation by any State of all rough diamonds from Côte d'Ivoire imposed by paragraph 6 of resolution 1643 (2005). The Council further took note of the report of the Secretary-General dated 14 October 2008,[63] and of the reports of the United Nations Group of Experts on Côte d'Ivoire dated 14 April 2008[64] and 15 October 2008.[65] In a letter dated 16 December 2008 from the Secretary-General addressed to the President of the Security Council, the Secretary-General appointed Grégoire Bafouatika, Republic of the Congo (aviation), James Bevan, United Kingdom of Great Britain and Northern Ireland (arms), Noora Jamsheer, Bahrain (diamonds) and El Hadi Salah, Algeria (customs) to the Group of Experts.[66]

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[62] S/2008/769.

[63] S/2008/645

[64] S/2008/235

[65] S/2008/598

[66] Letter from the Secretary-General addressed to the President of the Security Council dated 16 December 2008 (S/2008/793).

(v) *Liberia*

In resolution 1854 (2008), adopted on 19 December 2008, the Security Council, acting under Chapter VII of the Charter, decided to renew the measures on arms imposed by paragraph 2 of resolution 1521 (2003) and modified by paragraphs 1 and 2 of resolution 1683 (2006) and by paragraph 1 (b) of resolution 1731 (2006), and to further renew the measures on travel imposed by paragraph 4 of resolution 1521 (2003) for a further period of 12 months.

(*f*) Terrorism

(i) *The United Nations Global Counter-Terrorism Strategy*

On 5 September 2008, the General Assembly adopted resolution 62/272 entitled "The United Nations Global Counter-Terrorism Strategy", in which it reiterated its strong condemnation of terrorism in all its forms and manifestations, committed by whomever, wherever and for whatever purposes, as it constituted one of the most serious threats to international peace and security. The Assembly further recognized the importance of institutionalizing the Task Force within the Secretariat and took note of the report of the Secretary-General on the subject.[67] Non-governmental organizations and civil society were encouraged to engage on how to enhance efforts to implement the Strategy,[68] including through interaction with Member States and the United Nations system, and the Assembly called upon the United Nations entities involved in supporting counter-terrorism efforts to continue to facilitate the promotion and protection of human rights and fundamental freedoms while countering terrorism. The Assembly further reaffirmed the need to enhance international cooperation in countering terrorism, and in this regard, the Assembly recalled the role of the United Nations system in promoting international cooperation and capacity-building as one of the elements of the Strategy.

(ii) *Security Council Committees*

a. Al-Qaida and Taliban Sanctions Committee

The Committee known as "the Al-Qaida and Taliban Sanctions Committee" was established pursuant to Security Council resolution 1267 (1999), which also established a sanction regime, modified and strengthened by subsequent resolutions.[69]

On 30 June 2008, the Security Council adopted resolution 1822 (2008), in which, acting under Chapter VII of the Charter, it decided that all States should take the measures as previously imposed by the provisions of resolutions 1267 (1999), 1333 (2000), 1390 (2002), with respect to Al-Qaida, Usama bin Laden and the Taliban, and other individuals,

[67] For more information, see the report of the Secretary-General entitled "United Nations Global Counter-Terrorism Strategy: activities of the United Nations system in implementing the Strategy", A/62/898.

[68] United Nations Global Counter-Terrorism Strategy, adopted by Member States on 8 September 2006, in the form of a resolution and an annexed Plan of action, see A/RES/60/288.

[69] Security Council resolutions, 1333 (2000), 1390 (2002), 1455 (2003), 1526 (2004), 1617 (2005), 1735 (2006) and 1822 (2008).

groups, undertakings, and entities associated with them, as referred to in the list created pursuant to resolutions 1267 (1999) and 1333 (2000), also called the "Consolidated List". The Council further decided that Member States may permit the addition to accounts frozen pursuant to the above provision of any payment in favour of listed individuals, groups, undertakings or entities, provided that any such payments continued to be subject to this provisions and were frozen.

In the same resolution, Member States were encouraged to submit to the Committee for inclusion in the Consolidated List names of individuals, groups, undertakings, and entities participating, by any means, in the financing or support of acts or activities of Al-Qaida, Usama bin Laden and the Taliban, and other individuals, groups, undertakings, and entities associated with them.

With regard to delisting, the Security Council welcomed the establishment within the Secretariat of the Focal Point,[70] which provided listed individuals, groups, undertakings or entities with the option to submit a petition for de-listing directly to the Focal Point. The Council directed the Committee to continue to work, in accordance with its guidelines, to consider petitions for the removal from the Consolidated List of individuals and entities who no longer meet the criteria established in the relevant resolutions and to consider an annual review of the names on the Consolidated List of individuals reported to be deceased, in order to ensure that the Consolidated List would be as updated and accurate as possible. The Committee was further requested to conduct a review of all names on the Consolidated List by 30 June 2010, and to consider, where and when appropriate, visits to selected countries by the Chairman and/or Committee members to enhance the full and effective implementation of the measures with a view to encouraging States to comply fully with this resolution and relevant previous resolutions.[71]

In order to assist the Committee in the fulfilment of its mandate, the Council decided to extend the mandate of the current New York-based Monitoring Team,[72] for a further period of 18 months, and requested the Secretary-General to make the necessary arrangements to this effect. The Council furthermore decided to review the sanctions measures of this resolution, with a view to their possible further strengthening in 18 months or sooner if necessary.[73]

b. Lebanon

The United Nations International Independent Investigation Commission (UNIIIC) ("the Commission"), based in Lebanon, was established by Security Council resolution 1595 (2005) on 7 April 2005 to assist the Lebanese authorities in their investigation of all aspects of the terrorist bombing in Beirut on 14 April 2005 that killed former Lebanese Prime Minister Rafiq Hariri and others. In 2008, the Security Council adopted resolution 1815 (2008) on 2 June 2008 and resolution 1852 (2008) on 17 December 2008 by which it

[70] For further information, see Security Council resolution 1730 (2006).

[71] Security Council resolutions 1267 (1999), 1333 (2000), 1390 (2002), 1455 (2003), 1526 (2004), 1617 (2005) and 1735 (2006).

[72] Appointed by the Secretary-General pursuant to paragraph 20 of resolution 1617 (2005).

[73] Letters from the Secretary-General to the President of the Security Council dated 7 July 2008 and 2 October 2008 (S/2008/441 and S/2008/632).

extended the mandate of the Commission until 31 December 2008 and 28 February 2009, respectively.

In resolution 1815 (2008), the Security Council examined the report of the Commission[74] and responded favourably to the request to extend the mandate of the Commission expressed by the Commissioner in his briefing to the Security Council on 8 April 2008, and expressed by the Prime Minister of Lebanon in a letter to the Secretary-General, dated 8 May 2008.[75] The Council furthermore declared its readiness to terminate the mandate earlier if the Commission reported that it has completed the implementation of its mandate.

In resolution 1852 (2008), the Council welcomed the report of the Commission[76] and took note of the Commission and the Prime Minister of Lebanon's request[77] to extend the mandate of the Commission up to 28 February 2009, so that it could continue its investigation without interruption and gradually transfer operations, staff and assets to The Hague with a view to completing the transition by the time the Tribunal would start functioning.

In a letter dated 30 January 2008 from the Secretary-General to the President of the Security Council,[78] the Secretary-General conveyed the request of the Prime Minister of Lebanon, Mr. Fuad Siniora, for technical assistance for the Government of Lebanon's efforts to investigate the murder of Major Wissam Eid of the Internal Security Forces, Adjutant Oussama Merheb and other civilians. The Government requested that the International Independent Investigation Commission contact the relevant Lebanese authorities for that purpose. The Security Council responded positively to the request through a letter dated 31 January 2008 from the President of the Security Council addressed to the Secretary-General,[79] in which it invited the Commission to extend appropriate technical assistance to the Lebanese authorities in the investigation.

c. Counter-Terrorism Committee

The Counter-Terrorism Committee was created by Security Council resolution 1373 (2001), with the mandate to bolster the ability of United Nations Member States to prevent terrorist acts, both within their borders and across regions.

In resolution 1805 (2008), adopted on 20 March 2008, the Security Council welcomed the revised "Organizational plan for the Counter-Terrorism Committee Executive Directorate" submitted by its Executive Director and the recommendations contained therein.[80] The Security Council decided that the Counter Terrorism Committee Executive Directorate would continue to operate as a special political mission under the policy guidance of the Counter-Terrorism Committee for the period ending on 31 December 2010.

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[74] See letter dated 28 March 2008 from the Secretary-General addressed to the President of the Security Council, (S/2008/210), tenth report of the International Independent Investigation Commission.

[75] See letter of Prime Minister of Lebanon dated 8 May 2008 (S/2008/334, Enclosure).

[76] See letter dated 2 December 2008 from the Secretary-General to the President of the Security Council (S/2008/752), eleventh report of the International Independent Investigation Commission.

[77] See letter of the Prime Minister of Lebanon dated 4 December 2008 (S/2008/764).

[78] S/2008/60.

[79] S/2008/61.

[80] S/2008/80.

(*g*) Piracy

Security Council

During the year 2008, the Security Council adopted, under Chapter VII of the Charter, resolution 1816 (2008) of 2 June 2008, resolution 1838 (2008) of 7 October 2008, resolution 1844 (2008) of 20 November 2008, resolution 1846 (2008) of 2 December 2008, and resolution 1851 (2008) of 16 December 2008, in which it iterated its condemnation of all acts of piracy and armed robbery at sea against vessels off the coast of Somalia.

In resolution 1816 (2008) the Security Council decided that, for a period of six months from the date of the resolution, States cooperating with the Transitional Federal Government (TFG) in the fight against piracy and armed robbery at sea off the coast of Somalia, could enter the territorial waters of Somalia for the purpose of repressing acts of piracy and armed robbery at sea, and to use within the territorial waters of Somalia, in a manner consistent with action permitted on the high seas with respect to piracy under relevant international law, all necessary means to repress acts of piracy and armed robbery. The cooperating States undertaking activities pursuant to this authorization were requested to ensure that those activities would not have the practical effect of denying or impairing the right of innocent passage to the ships of any third State. The Council affirmed that the authorization provided in the resolution applied only to the situation in Somalia, that the authorization had been given only following the consent of the TFG, and that it should not be considered a precedent establishing customary international law.

In resolution 1838 (2008) the Security Council called upon States interested in the security of maritime activities to take part actively in the fight against piracy on the high seas off the coast of Somalia, and States whose naval vessels and military aircraft operate on the high seas and airspace off the coast of Somalia, to use on the high seas and airspace off the coast of Somalia the necessary means, in conformity with international law, for the repression of acts of piracy. In the same resolution, States that had the capacity to do so were urged by the Council to cooperate with the TFG in the fight against piracy and armed robbery at sea in conformity with the provisions of resolution 1816 (2008), and to, in conformity with the provisions of resolution 1814 (2008), to continue to take action to protect the World Food Programme maritime convoys, which were vital to bring humanitarian assistance to the affected populations in Somalia.

On 20 November 2008, the Security Council adopted resolution 1844, in which it decided, *inter alia*, that all Member States should take the necessary measures to prevent the entry into or transit through their territories of individuals designated by the Committee,[81] and that all Member States should freeze without delay the funds, other financial assets and economic resources which were on their territories, and which were owned or controlled, directly or indirectly, by the individuals or entities designated by the Committee or by individuals or entities acting on their behalf or at their direction, or by entities owned or controlled by them, as designated by the Committee. The Security Council further decided that all Member States should take the necessary measures to prevent the direct or indirect supply, sale or transfer of weapons and military equipment and the direct or indirect supply of technical assistance or training, financial and other assistance including investment, brokering or other financial services, related to military activities

[81] Established pursuant to Security Council resolution 751 (1992).

or to the supply, sale, transfer, manufacture, maintenance or use of weapons and military equipment, to the individuals or entities designated by the Committee.

Furthermore, the Council decided to expand the mandate of the Committee to include, *inter alia*, the tasks to monitor, with the support of the Monitoring Group;[82] to implement the measures above imposed in the resolution, in addition to the general and complete arms embargo; to seek from all Member States, in particular those in the region, information regarding the actions taken by them to implement effectively the measures; to designate individuals and entities pursuant to the provisions of the resolution; to consider and decide upon requests for exemptions to the measures; to review regularly the list of individuals and entities designated by the Committee; and to identify possible cases of non-compliance with the measures. The mandate of the Monitoring Group was expanded to include, *inter alia*, the tasks to assist the Committee in monitoring the implementation of the resolution by providing any information on violations of the measures imposed, in addition to the general and complete arms embargo, and to include in its reports to the Committee any information relevant to the Committee's designation of the individuals and entities.

In addition, the Security Council encouraged Member States to submit to the Committee, for inclusion in its list of designees, names of individuals or entities who meet the criteria set out in the resolution. The Council directed the Committee to consider requests, in accordance with its guidelines, for the removal from the Committee's list of designees those who no longer meet the criteria pursuant to this resolution, and encouraged the Committee to ensure that fair and clear procedures existed for placing individuals and entities on the Committee's list of designees and for removing them, as well as for granting humanitarian exemptions.

In resolution 1846 (2008) the Security Council decided that, for a period of 12 months, States and regional organizations cooperating with the TFG in the fight against piracy and armed robbery at sea off the coast of Somalia could enter into the territorial waters of Somalia for the purpose of repressing acts of piracy and armed robbery at sea and use, within the territorial waters of Somalia and under relevant international law, all necessary means to repress acts of piracy and armed robbery at sea.

By resolution 1851 (2008) the Security Council decided that, for a period of twelve months from the date of adoption of resolution 1846 (2008), States and regional organizations cooperating in the fight against piracy and armed robbery at sea off the coast of Somalia, for which advance notification had been provided by the TFG to the Secretary-General, may undertake all necessary measures that were appropriate for the purpose of suppressing acts of piracy and armed robbery at sea, pursuant to the request of the TFG, provided that the measures were undertaken consistently with applicable international humanitarian and human rights law. The Council further invited all States and regional organizations fighting piracy off the coast of Somalia to conclude special agreements or arrangements with countries willing to take custody of pirates in order to embark law enforcement officials ("shipriders") from the latter countries to facilitate the investigation and prosecution of persons detained as a result of operations conducted under this resolution, provided that the advance consent of the TFG was obtained for the exercise of third

[82] Established pursuant to Security Council resolution 1519 (2003).

state jurisdiction by shipriders in Somali territorial waters, and provided that such agreements or arrangements did not prejudice the effective implementation of the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation.[83]

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

Women and peace and security

In a Presidential Statement dated 29 October 2008,[84] the Security Council reaffirmed its commitment to the full and effective implementation of resolution 1325 (2000) on Women and Peace and Security. The Security Council urged Member States, international, regional and sub-regional organizations to take measures to increase the participation of women in conflict prevention, conflict resolution and peacebuilding, and to strengthen the role of women as decision-makers in these areas. The Council furthermore called upon the Secretary-General to appoint more women to pursue good offices on his behalf, particularly as Special Representatives and Special Envoys. In addition, the Security Council condemned all violations of international law committed against women and girls during and after armed conflicts, and urged for the complete cessation by all parties of such acts with immediate effect, and also urged Member States to bring to justice those responsible for crimes of this nature. Furthermore, the Secretary-General was requested to provide a report on the implementation of resolution 1325 (2000) over the coming year, including information on the impact of armed conflict on women and girls in situations of which the Council was seized; on the obstacles and challenges to strengthening women's participation in conflict prevention, conflict resolution and peacebuilding. In addition, the Secretary-General was requested to provide recommendations to address those issues, to be submitted to the Security Council by October 2009.

(*i*) Missions of the Security Council

(i) *Africa*

In a letter dated 30 May 2008, 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 31 May to 10 June 2008, that would travel to Djibouti (on Somalia), the Sudan, Chad, the Democratic Republic of the Congo and Côte d'Ivoire.[85]

With regard to Somalia, the terms of reference for the mission were to reaffirm the commitment of the Security Council to a comprehensive and lasting settlement of the situation in Somalia through the Transitional Federal Charter, and to welcome and encourage the continued efforts of the President, the Prime Minister and the transitional federal institutions to advance the political process and to implement the relevant steps of the transitional period, as required by the Transitional Federal Charter. The mission would further

[83] United Nations, *Treaty Series*, vol. 1678, p. 201.

[84] S/PRST/2008/39.

[85] See letter dated 30 May 2008 from the President of the Security Council addressed to the Secretary-General (S/2008/347).

express the determination of the Security Council to assist the Somali efforts through a strengthened presence and a more active role of the United Nations, including practical support of the Special Representative of the Secretary-General and the United Nations Political Office for Somalia. Furthermore, the mission was to commend the contribution that the African Union Mission in Somalia (AMISOM) was making to lasting peace and stability in Somalia, and to express the Council's deep concern at the persistence of violations of human rights and international humanitarian law in Somalia, and to call upon all parties and armed groups in Somalia to take appropriate steps to protect, *inter alia*, the civilian population, United Nations and humanitarian personnel, and to permit safe and unhindered access for the delivery of humanitarian assistance to all those in need.

The terms of reference for the mission in the Sudan were to urge the Government of the Sudan to intensify its efforts to resolve the crisis in Darfur, to reiterate the Security Council's support for the political process under the mediation of the United Nations Special Envoy for Darfur,[86] and to urge all parties to end the violence and to engage constructively in a peace process with view to finding lasting peace in the Sudan. The mission would further reiterate the Council's profound appreciation of, and support for, the African Union-United Nations Hybrid Operation in Darfur (UNAMID), and underline its concern for the security of civilians and humanitarian aid workers and for humanitarian access to populations in need. In addition, the mission was to call upon the Governments of Chad and the Sudan to abide by their obligations under the Dakar Agreement of 13 March 2008, the Tripoli Agreement of 8 February 2006 and other bilateral agreements. Finally, the mission was to underline the need to ensure that all Security Council resolutions were implemented, that the rule of law was upheld in all situations and that due process took its course.

The terms of reference for the mission in Chad were to reaffirm the Security Council's commitment to the cause of peace in the region, in the context of the ongoing violence and activities of armed groups in Darfur, eastern Chad and the north-eastern Central African Republic, and to stress the Council's commitment to help the Chadian and Central African authorities to protect refugees from Darfur, internally displaced persons and other vulnerable civilian populations and to facilitate the delivery of humanitarian assistance in those areas of Chad and the Central African Republic. The mission was further to call upon the Governments of the Sudan and Chad to abide by their obligations under the Dakar Agreement of 13 March 2008, the Tripoli Agreement of 8 February 2006, and other bilateral agreements, to recall the Council's condemnation of the continuing activity of rebel armed groups in Chad, and to urge all parties to respect the Syrte Agreement of 25 October 2007. Finally, the mission was to encourage the Chadian authorities to persevere in promoting political dialogue with respect for the constitutional framework, as initiated by the agreement of 13 August 2007.

The terms of reference for the mission in Democratic Republic of the Congo were to acknowledge the primary responsibility of the Government of the Democratic Republic of the Congo to consolidate peace and stability, and to reaffirm the Security Council's commitment to contribute to the consolidation of peace and stability in the Democratic Republic of

[86] In his letter dated 1 February 2008, addressed to the President of the Security Council (S/2008/130), the Secretary-General extended the appointment of his Special Envoy for Darfur to 30 June 2008.

the Congo, in particular through the United Nations Organization Mission (MONUC). The Mission would express the Council's strong support for the new dynamic launched by the Nairobi joint communiqué of 9 November 2007 and the Goma conference of 6 to 23 January 2008, which together represented a major step towards the restoration of lasting peace and stability in the eastern part of the Democratic Republic of the Congo and the Great Lakes region. It would further stress the Council's demand that the militias and armed groups that were still present in the eastern part of the Democratic Republic of the Congo lay down their arms, and would encourage efforts by the Government of the Democratic Republic of the Congo and regional cooperation to that effect, including improved relations between the Democratic Republic of the Congo and the Republic of Rwanda. The mission would also urge the Congolese authorities to take appropriate steps to end the illegal trade in natural resources, and call on the former to intensify as a matter of urgency their efforts to reform the security sector. Furthermore, the Mission would emphasize the Council's support for the strengthening of democratic institutions, the rule of law, and good governance in the Democratic Republic of the Congo as well as encourage further efforts to address the grave humanitarian situation that persisted in the Democratic Republic of the Congo.

The terms of reference for the mission in Côte d'Ivoire were to welcome the ownership of the peace process by the Ivorian parties in the framework of the Ouagadougou Political Agreement and its supplementary agreements, to encourage all parties to implement fully and in good faith all the provisions of the Agreement and its supplementary agreements, and to underline the need to meet the timetables established therein. Welcoming the signing of regulatory decrees relating to the organization of the elections, the mission would urge the Government and the Independent Electoral Commission to resolve promptly the technical issues concerning the elections, and, welcoming the signing on 24 April 2008 of the Code of Good Conduct by the major political parties in Côte d'Ivoire, the mission would further stress the need for it to be observed scrupulously by all the signatories. The mission was furthermore to call upon the parties to ensure an environment favourable to the holding of free, open, fair and transparent elections, to recall the importance of certification of all stages of the electoral process by the Special Representative of the Secretary-General and to encourage the Government of Côte d'Ivoire to facilitate the presence of international observers during the elections. The Council would examine the sanctions regime in the light of developments in the peace process and the elections. Finally, the mission was to urge the Ivorian parties to ensure the protection of the civilian population, in particular women and children, and to commend and encourage the United Nations Operation in Côte d'Ivoire and Force Licorne for their peacekeeping efforts.

(ii) *Afghanistan*

In a letter dated 14 November 2008, the President of the Security Council informed the Secretary-General that the members of the Security Council had decided to send a mission to Afghanistan from 21 to 28 November 2008.[87]

The terms of reference for the mission to Afghanistan were to reaffirm the Security Council's continued support for the Government and people of Afghanistan as they rebuild their country, and to review the progress made by the Afghan Government, with

[87] S/2008/708.

the assistance of the international community and in accordance with the Afghanistan Compact, in addressing the interconnected challenges in the areas of security, governance, rule of law and human rights, economic and social development, as well as on the crosscutting issue of counter-narcotics. The mission would assess the status of implementation of relevant Security Council resolutions, in particular resolutions 1806 (2008) and 1833 (2008), as well as the mutual pledges and commitments made by the participants in the International Conference in Support of Afghanistan, held in Paris on 12 June 2008, and to further express the Security Council's strong support for the ongoing efforts of the Secretary-General, his Special Representative for Afghanistan and the women and men of the United Nations Assistance Mission in Afghanistan (UNAMA). The mission's aim was furthermore to review the implementation of the enhanced coordinating role assigned to UNAMA and to the Special Representative of the Secretary-General by Security Council resolution 1806 (2008), as well as efforts made by the Afghan authorities, and to address the threat to the security and stability of Afghanistan posed by the Taliban, Al-Qaida, illegal armed groups, criminals and those involved in the narcotics trade and in the diversion of chemical precursors. The humanitarian situation in the country, including the food security situation, and the implications for security and stability were also to be reviewed by the mission, which would also assess the cooperation, coordination and mutual support between UNAMA and the International Security Assistance Force, including on humanitarian and human rights issues.

3. Disarmament and related matters[88]

(*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 2008 session in New York, held from 7 to 24 April 2008, the Commission concluded its three-year cycle focusing on the two agenda items concerning recommendations for achieving the objectives of nuclear disarmament and nuclear non-proliferation; and practical confidence-building measures in the field of conventional weapons. By a note dated 4 March 2008, the Secretary-General transmitted to the Commission the annual report of the Conference on Disarmament, together with all the official records of the sixty-second session of the General Assembly relating to disarmament matters.[89] At its 289th plenary meeting, on 24 April 2008, the Disarmament Commission adopted the reports submitted by its two Working Groups, and agreed to submit the text of those reports to the General Assembly. At the same meeting, the Commission adopted the Chairman's proposal on procedural and

[88] For detailed information, see *United Nations Disarmament Yearbook*, vol. 33:2008 (United Nations publication, Sales No. E.09.IX.1). The *Yearbook* can also be downloaded, free of charge, at http://www.un.org/disarmament/HomePage/ODAPublications/Yearbook.

[89] A/CN.10/205.

organizational elements for the possible participation of experts in the work of the Commission and decided to continue the consideration of this issue in the future.

(ii) *Conference on Disarmament*[90]

In 2008, the Conference on Disarmament was in session from 23 January to 28 March, from 12 May to 27 June, and from 28 July to 12 September. On 24 January 2008, the Conference adopted its agenda, which read as follows: cessation of the nuclear arms race and nuclear disarmament; prevention of nuclear war, including all related matters; prevention of an arms race in outer space; effective international arrangements to assure non-nuclear-weapon States against the use or threat of use of nuclear weapons; new types of weapons of mass destruction and new systems of such weapons; radiological weapons; and comprehensive programme of disarmament; transparency in armaments. On 9 September 2008, the Conference adopted the report on its 2008 session,[91] and decided to transmit it to the General Assembly.

(iii) *General Assembly*

On 2 December 2008 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, which are highlighted below.

In resolution 63/82, entitled "Report of the Conference on Disarmament", the Assembly called upon the Conference to further intensify its efforts towards reaching an agreement on a programme of work. The Assembly also requested State members of the Conference to cooperate with the current President and successive Presidents in their efforts to guide the Conference to the early commencement of substantive work in its 2009 session.

In resolution 63/83, entitled "Report of the Disarmament Commission", the Assembly recommended that the Disarmament Commission intensify consultations with a view to reaching agreement on the remaining agenda items, in accordance with decision 52/492, before the start of its substantive session of 2009.

The Assembly also adopted decision 63/519, entitled "Convening of the fourth special session of the General Assembly devoted to disarmament".

(*b*) Nuclear disarmament and non-proliferation issues

The Preparatory Committee for the 2010 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons (NPT)[92] held its second session from 28 April to 9 May 2008 in Geneva, Switzerland. The meeting was the second of three sessions to be held prior to the 2010 Review Conference. The Preparatory Committee held

[90] 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.

[91] CD/1853.

[92] For the final report of the 2008 Preparatory Committee for the 2010 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, see NPT/CONF.2010/PC.II/13.

nine meetings for substantive discussion on three main clusters[93] and three specific blocs of issues.[94] As the Preparatory Committee could not agree to attach the Chairman's factual summary to its report, the summary was issued as a Chairman's Working Paper.[95]

From 14 to 25 April 2008, the International Atomic Energy Agency (IAEA) hosted its fourth Review Meeting of the Contracting Parties of the Convention on Nuclear Safety in Vienna.[96] Based on submitted national reports of Contracting Parties, the Review Meeting observed a high degree of compliance with the Convention on Nuclear Safety. Participating countries further recognized the importance of transparency with respect to nuclear safety including via such activities as public meetings, revised legislation and increased use of websites. In addition, all participating Contracting Parties reported some progress regarding their regulatory framework for nuclear safety and many reported substantial progress regarding safety management and culture, in relevant national organizations and regulatory bodies.

Also in 2008, the IAEA held its 52nd General Conference of member States in Vienna from 29 September to 4 October.[97] At its concluding session, the General Conference adopted several resolutions and decisions[98] backing the IAEA work in key areas including nuclear safety and applications, technology transfer and safeguards implementation. This included GC(52)/RES/12, entitled "Strengthening the Agency's activities related to nuclear science, technology and applications" and GC(52)/DEC/10, entitled "Cooperation agreements with intergovernmental organizations."

During 2008, the Director General submitted four reports[99] to the Board of Governors on the implementation of the Islamic Republic of Iran's NPT safeguards agreement and relevant United Nations Security Council resolutions. The Agency was able to verify the non-diversion of the declared nuclear material in Iran in 2008. As Iran had not provided the information and access that would have allowed the Agency to make progress on a number of outstanding issues related to Iran's past nuclear activities, and Iran had not implemented its additional protocol, the Agency remained unable to draw a conclusion regarding the absence of undeclared nuclear material and activities in Iran. The reports concluded that, contrary to the decisions of the Security Council, Iran had not suspended its uranium enrichment-related activities, and had continued its heavy water-related projects.

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[93] Cluster one dealt with nuclear non-proliferation, disarmament and international peace and security; cluster two with nuclear non-proliferation, safeguards and nuclear-weapon-free zones; and cluster three with the inalienable right of all Treaty parties to develop research, production and use of nuclear energy for peaceful purposes.

[94] The first block addressed nuclear disarmament and security assurances, the second addressed regional issues and the third addressed other Treaty provisions.

[95] See NPT/CONF.2010/PC.II/WP.43.

[96] CNS/RM/2008/6 FINAL.

[97] For detailed information regarding the Conference, see IAEA website http://www.iaea.org/About/Policy/GC/GC52/#day-5.

[98] See resolutions GC(52)/RES/9, GC(52)/RES/11, GC(52)/RES/13, GC(52)/RES/14 and GC(52)/RES/15, and decision GC(52)/DEC/10

[99] GOV/2008/4 of 22 February 2008; GOV/2008/15 of 26 May 2008; GOV/2008/38 of 15 September 2008; and GOV/2008/59 of 19 November 2008.

(i) *General Assembly*

On 2 December 2008, the General Assembly adopted, on the recommendation of the First Committee, 13 resolutions and one decision[100] dealing with nuclear disarmament and non-proliferation issues, three of which are highlighted below.

In its resolution 63/73, entitled "Renewed determination towards the total elimination of nuclear weapons" reaffirmed the crucial importance of the Treaty on the Non-Proliferation of Nuclear Weapons as the cornerstone of the international nuclear disarmament and non-proliferation regime, and expressed regret over the lack of agreement on substantive issues at the Review Conference of the Parties to the Treaty during the World Summit Outcome in 2005. Thus, the Assembly called on States to redouble their efforts to prevent and curb the proliferation of nuclear and other weapons of mass destruction[101] and their means of delivery. The Conference on Disarmament was called upon to immediately resume its substantive work to its fullest. The Assembly further stressed the importance of the immediate commencement of negotiations on a fissile material cut-off treaty in the Conference on Disarmament.

In its resolution 63/58 entitled "Towards a nuclear-weapon-free world: accelerating the implementation of nuclear disarmament commitments", the General Assembly mindful of the approaching 2010 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, urged State parties to intensify their constructive engagement in the work of the Preparatory Committee. All States parties were further called upon to spare no effort to achieve the universality of the Treaty on the Non-Proliferation of Nuclear Weapons, and, in this regard, India, Israel and Pakistan were urged to accede to the Treaty as non-nuclear-weapon States promptly and without conditions.

In its resolution 63/49, entitled "Follow-up to the advisory opinion of the International Court of Justice on the Legality of the Threat or Use of Nuclear Weapons and on Their Destruction", the General Assembly underscored the unanimous conclusion of the International Court of Justice that there exists an obligation to pursue in good faith and to bring to a conclusion negotiations leading to the nuclear disarmament in all its aspects. The Assembly, therefore, continued to call upon States to immediately fulfil this obligation by commencing multilateral negotiations leading to an early conclusion of a nuclear weapons convention that prohibits, *inter alia*, the development, production, threat or use of nuclear weapons, and that provides for their elimination.

(ii) *Security Council*

In its resolution 1803 (2008) adopted on 3 March 2008, the Security Council, acting under Chapter VII of the Charter, reaffirmed that the Islamic Republic of Iran should without further delay take the steps required by the IAEA Board of Governors in its resolution GOV/2006/14 and by Security Council resolution 1737 (2006). The Council called upon all States to exercise vigilance and restraint regarding entry into or transit through their territories of individuals engaged in or providing support for Iran's proliferation-sensitive

[100] See General Assembly resolutions 63/36, 63/39, 63/41, 63/46, 63/47, 63/55, 63/64, 63/70, 63/75 and 63/87, and decision 63/520.

[101] See also resolution 63/36.

nuclear activities or for the development of nuclear-weapon delivery systems. In that connection, the Council decided that all States should notify the Committee established pursuant to paragraph 18 of resolution 1737 (2007) of entry or transit of persons mentioned in the annex to resolution 1737, annex 1 to resolution 1747 (2007) or annex 1 to the present resolution, as well as other persons designated by the Committee or the Council as being engaged in, directly associated with or providing support for Iran's proliferation sensitive nuclear activities or for the development of nuclear weapon delivery systems. The Council further decided that all States shall take the necessary measures to prevent the entry into or transit through their territories of individuals designated in annex II to the present resolution as well as of additional persons designated by the Security Council or the Committee. In addition, the Council called upon all States to exercise vigilance over the activities of financial institutions in their territories with all banks domiciled in Iran, in particular with Bank Melli and Bank Saderat.

On 25 April 2008, the Council adopted resolution 1810 (2008) on non-proliferation of chemical, biological and nuclear weapons. In the resolution, the Council reaffirmed that the proliferation of nuclear, chemical and biological weapons as well as their means of delivery, constituted a threat to international peace and security. Acting under Chapter VII of the Charter, the Council reiterated its decisions in and the requirements of resolution 1540 (2004) and emphasized the importance for all States to implement fully that resolution. The Council further decided to extend the mandate of the 1540 Committee, with the assistance of experts, until 25 April 2011, and requested the Committee to consider a comprehensive review of the status of implementation of resolution 1540 (2004) and to report the outcome to the Council by 31 January 2009.

(*c*) Biological and chemical weapons issues

The 2008 Meeting of the States Parties of the Biological Weapons Convention,[102] in which 97 States parties participated, was held from 1 to 5 December 2008 in Geneva.[103] In accordance with the decision of the Sixth Review Conference in 2006, the Meeting of States Parties considered the work of the Meeting of Experts[104] to discuss and promote a common understanding and effective action on: (i) National, regional and international measures to improve biosafety and biosecurity, including laboratory safety and security of pathogens and toxins; and (ii) Oversight, education, awareness raising, and adoption and/or development of codes of conduct with the aim of preventing misuse in the context of advances in bio-science and bio-technology research.

Concerning chemical weapons issues, the second special session of the Conference of the States parties to Review the Operation of the Chemical Weapons Convention[105] was held

[102] 1972 Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction, United Nations, *Treaty Series*, vol. 1015, p. 163.

[103] For the report of the Meeting of State Parties, see BWC/MSP/2008/5.

[104] For the report of the Meeting of Experts, see BWC/MSP/2008/MX/3.

[105] 1992 Convention on the Prohibition of the Development, Production and Stockpiling and Use of Chemical Weapons and on their Destruction, United Nations, *Treaty Series*, vol. 1974, p. 45.

from 7 to 18 April 2008 in The Hague, the Netherlands.[106] The Conference reaffirmed that the complete destruction of chemical weapons and the conversion or complete destruction of chemical weapons production facilities was essential for the realisation of the object and purpose of the Convention. The Conference further noted with satisfaction the verification activities of the Organisation for the Prohibition of Chemical Weapons, and the collective efforts of State parties, policy-making organs, the Secretariat and the Director-General towards the implementation of the Action Plan for the Universality of the Chemical Weapons Convention. The Conference further requested State parties to continue to review progress towards the full and effective national implementation of the Convention. The thirteenth session of the Conference of the State Parties to the Chemical Weapons Convention was subsequently held between 2 and 5 December 2008, also in the Hague, the Netherlands. Major agenda items discussed included the status of the implementation of the Convention and ensuring the universality of the Convention.

After the decision of the Council in June 2007 to terminate its mandate, the United Nations Monitoring, Verification and Inspection Commission (UNMOVIC) was officially closed down on 29 February 2008. On 9 June 2008, the Secretary-General presented a final account of the activities of UNMOVIC, in particular progress achieved regarding the future of UNMOVIC archives and other property, and financial issues related to its closure.[107]

General Assembly

On 2 December 2008, the General Assembly adopted resolution 63/53 entitled "Measures to uphold the authority of the 1925 Geneva Protocol", in which it renewed its previous call to all States to observe strictly the principles and objectives of the Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare.[108] The Assembly further reiterated its call on States that continue to maintain reservations to the 1925 Geneva Protocol to withdraw them.

On the same date, the General Assembly adopted resolution 63/48, entitled "Implementation of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction", in which the Assembly stressed that the implementation of the Convention makes a major contribution to international peace and security through the elimination of existing stockpiles of chemical weapons. In this context, all States parties to the Convention were urged to meet in full and on time their obligations under the Convention and to support the Organization for the Prohibition of Chemical Weapons in its implementation activities.

The General Assembly also adopted resolution 63/88, entitled "Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and Their Destruction", in which the Assembly urged States parties to continue to work closely with the Implementation Support Unit of the Conference on Disarma-

[106] For the report of the Second Review Conference, Organization for the Prohibition of Chemical Weapons, document RC-2/4.

[107] Note by the Secretary-General, entitled "United Nations Monitoring, Verification and Inspection Commission" (S/2007/314).

[108] League of Nations, *Treaty Series,* vol. 94, p. 65.

ment Secretariat and Conference Support Branch of the Office for Disarmament Affairs in fulfilling its mandate, in accordance with the decision of the Sixth Review Conference.

(*d*) Conventional weapons issues

On 30 May 2008, the Convention of Cluster Munitions[109] was adopted by 107 States in Dublin, Ireland. The Convention prohibits all use, stockpiling, production and transfer of cluster munitions, as defined in the Convention. The Convention also addresses assistance to victims, clearance of contaminated areas and destruction of stockpiles. Furthermore, it includes transparency measures as well as guidance to address possible compliance issues. The Convention was opened for signature at a signing conference in Oslo on 3 December 2008 and will enter into force six months after its ratification by 30 States parties.

In the area of anti-personnel mines, the ninth Meeting of the State Parties to the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-personnel Mines and Their Destruction (1997 Mine-Ban Convention)[110] was held in Geneva from 24 November 2008 to 28 November 2008. The Meeting considered particularly the implementation of articles 4 and 5 of the Convention. The 15 States that had requested extensions to their 2009 demining deadlines were granted such deadlines after separate majority votes.

Regarding the 1980 Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be deemed to be Excessively Injurious or to have Indiscriminate Effects,[111] the Governmental Group of Experts met for a total of five sessions in 2008. Although the States parties had decided that the Group would meet four times in 2008, the dynamics that prevailed over the negotiations on cluster munitions compelled the Group's Chairperson, in consultation with the regional groups, to convene an additional session in April.[112]

The Meeting of the High Contracting Parties was held on 13 and 14 November 2008 in Geneva.[113] The Meeting considered the status of implementation of, and compliance with, the Convention and its Protocols. In this context, the State Parties took note of the report on the implementation of the Plan of Action to Promote the Universality of the Convention and further recognized the value of the Sponsorship Programme, established within the framework of the Convention, for strengthening implementation endeavours. The Meeting of the High Contracting Parties also decided to keep the issue of Mines Other Than Anti-Personnel Mines under the overall responsibility of the chair-person designate and agreed that the Group of Governmental Experts would continue its negotiations concerning the humanitarian impact of cluster munitions.

Concerning the Convention's protocols, the Tenth Annual Conference[114] of State parties to the Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and

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[109] See chapter IV of this publication.

[110] United Nations, *Treaty Series*, vol. 2056, p. 211.

[111] United Nations, *Treaty Series*, vol. 1341, p. 137.

[112] The session was held from 7 to 11 April 2008. See CCW/GGE/2008-I/3, para. 17.

[113] For the report of the Meeting of State Parties, see CCW/MSP/2008/4.

[114] For the final document of the Conference, see CCW/AP.II/CONF.10/2.

Other Devices[115] (1996 Amended Protocol II) was held on 12 November 2008 over the course of two plenary meetings. The Conference decided to issue an appeal on the occasion of the tenth anniversary of the Protocol to all non-member States to take all measures to accede to the amended Protocol II. The Conference also decided to establish, for the 2009 session, an informal open-ended Group of Experts which would review the operation and status of the Protocol, consider matters arising from reports by high contracting parties, and to address the issue of improvised explosive devices and the development of technologies to protect civilians against indiscriminate effects of mines. The work of the Group of Experts was to be considered by the Eleventh Annual Conference. In addition, the Second Conference of the High Contracting Parties to Protocol V on Explosive Remnants of War[116] was held in Geneva on 10 and 11 November 2008.

The Third Biennial Meeting of States on the implementation of the United Nations Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All its Aspects[117] was held at the United Nations Headquarters in New York from 14 to 18 July 2008, during which 10 plenary meetings were held to consider the implementation of the Programme of Action.[118] The Meeting considered, *inter alia*, the topics of illicit brokering, stockpile management and surplus disposal, international cooperation, assistance and national capacity-building.

General Assembly

On 2 December 2008, the General Assembly adopted, on the recommendation of the First Committee, 10 resolutions[119] dealing with conventional arms issues, of which two are highlighted below.

In resolution 63/61, entitled "Problems arising from the accumulation of conventional ammunition stockpiles in surplus", the General Assembly welcomed the report[120] by the Governmental Group of experts established pursuant to resolution 61/72, and took note of the replies submitted by Member States in response to the Secretary-General's request for views regarding the risks arising from the accumulation of conventional ammunition stockpiles in surplus and regarding national ways of strengthening controls on conventional ammunition.[121] The Assembly further appealed to all interested States to determine the size and nature of their surplus stockpiles of conventional ammunition, whether they represent a security risk, if appropriate, their means of destruction, and whether external assistance is needed to eliminate this risk.

In resolution 63/72, entitled "The illicit trade in small arms and light weapons in all its aspects", the General Assembly underlined the fact that the issue of the illicit trade in

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[115] Doc. CCW/CONF.I/16 (Part I).

[116] Doc.CCW/MSP/2003/2.

[117] A/CONF.192/15.

[118] For the final report of the Third Biennial Meeting, see A/CONF.192/BMS/2008/3.

[119] General Assembly resolutions 63/42, 63/54, 63/57, 63/61, 63/62, 63/66, 63/69, 63/71, 63/72 and 63/85.

[120] A/63/182.

[121] A/61/118 and Add.1, and A/62/166 and Add.1.

small arms and light weapons in all its aspects requires concerted efforts at the national, regional and international levels to prevent, combat and eradicate the illicit manufacture, transfer and circulation of small arms and light weapons, and that their uncontrolled spread in many regions of the world has a wide range of humanitarian and socio-economic consequences and poses a serious threat to peace, reconciliation, safety, security, stability and sustainable development at the individual, local, national, regional and international levels. The Assembly further encouraged all initiatives, including those of the United Nations, other international organizations, regional and subregional organizations, non-governmental organizations and civil society, for the successful implementation of the Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects, and emphasized the need to facilitate the implementation at the national level of the Programme of Action through the strengthening of national coordination agencies or bodies and institutional infrastructure.

In addition, the General Assembly adopted on 24 December 2008 resolution 63/240, entitled "Towards an arms trade treaty: establishing common international standards for the import, export and transfer of conventional arms". In the resolution, the Assembly endorsed the report of the Secretary-General, prepared with the assistance of the Governmental Group of Experts, taking into account the views of Member States.[122] The Assembly further encouraged all States to implement and address, on a national basis, the relevant recommendations contained in paragraphs 28 and 29 of the report of the Secretary-General, and commended all States to carefully consider how to achieve such implementation in order to ensure that their national systems and internal controls are at the highest possible standards to prevent the diversion of conventional arms from the legal to the illicit market.

(*e*) Regional disarmament activities of the United Nations

(i) *Africa*

In 2008, the United Nations Regional Centre for Peace and Disarmament in Africa[123] continued to implement its mandate through various activities in support of disarmament initiatives in the African region. The Centre provided logistical and technical support for the second workshop of the international tracing instrument for small and light weapons held in Lomé on 17 and 18 April 2008. The Centre further provided technical and logistical support for the regional seminars held in April 2008, also in Lomé, by the Office of Disarmament Affairs in Cooperation with the Government of Togo and with funding from the European Union.

(ii) *Latin America and the Caribbean*

In 2008, the United Nations Regional Centre for Peace, Disarmament and Development in Latin America and the Caribbean concluded major multi-year projects in assisting States to address illicit firearms trafficking, while fostering national ownership of disarma-

[122] The report of the Governmental Group of Experts is contained in document A/63/334.

[123] For the Report of the Secretary-General on the United Nations Regional Centre for Peace and Disarmament in Africa, see A/63/163.

ment activities. Specifically, it helped to train law-enforcement officials in both populated and border areas as well as to consolidate capacity-building efforts in Brazil, Colombia, the Dominican Republic, Jamaica and Paraguay. To strengthen regional information exchange on illicit firearms trafficking and other public security issues, the Centre continued to collaborate with the Brazilian Ministry of the Interior and UNDP-Brazil to maintain a network of relevant entities in the field, such as the International Criminal Police Organization (INTERPOL), the World Customs Organization and United Nations agencies. In 2008, this network was reinforced by the participation of the newly created American Police Community and the Latin America and Caribbean Community for Police Intelligence. In the context of peacekeeping operations, the Centre engaged in greater coordination with representatives from NGOs, research institutions and the media on disarmament and weapons destruction training of Brazilian and Peruvian peacekeepers. The Centre participated in training programmes with a view to introducing the United Nations Inter-Agency Disarmament, Demobilization and Reintegration Standards into the curriculum of peacekeeping training centres in both countries.

(iii) *Asia and the Pacific*

On 18 August 2008, the United Nations Regional Centre for Peace and Disarmament in Asia and the Pacific's office was relocated from New York to Kathmandu, Nepal. The Centre also continued to perform its mandate, during the year, through a variety of activities including the organization of seminars such as the UN Regional Seminar on Promoting the Universality of the Convention on Certain Conventional Weapons (CCW) and its Annexed Protocols in South Asia, Southeast Asia and the South Pacific (UNRCPD) held in Kathmandu on 17 and 18 December 2008.

The Centre carried out a programme of activities, organizing several annual conferences. The twentieth United Nations Conference on Disarmament Issues was held from 27 to 29 August in Saitama City, Japan, that focused on means of reinforcing the three pillars of the Non-Proliferation Treaty (NPT); the nuclear renaissance and nuclear non-proliferation, arms control and security in East Asia, and cooperation with civil society. The UNRCPD and the Government of the Republic of Korea organized the seventh joint conference entitled "Nuclear Renaissance and the NPT: Reinforcing the Three Pillars of the NPT". The Conference was held from 24 to 26 November in Jeju Island, Republic of Korea, with more than 50 representatives of Governments, international organizations, academia, research institutions and civil society in attendance. The conference focused on ways to revitalize the NPT process, as well as on nuclear and missile issues in Northeast Asia.

(iv) *General Assembly*

On 2 December 2008, the General Assembly adopted, on the recommendation of the First Committee, 14 resolutions[124] dealing with regional disarmament, of which two are highlighted below.

[124] General Assembly resolutions 63/38, 63/43, 63/45, 63/56, 63/63, 63/65, 63/74, 63/76, 63/77, 63/78, 63/80, 63/84 and 63/86 and decision 63/517.

In resolution 63/43 entitled "Regional disarmament", the Assembly affirmed that global and regional approaches to disarmament complement each other and should therefore be pursued simultaneously to promote regional and international peace and security. The Assembly further stressed that sustained efforts are needed, within the framework of the Conference on Disarmament and under the umbrella of the United Nations, to make progress on the entire range of disarmament issues.

In its resolution 63/44, entitled "Conventional arms control at the regional and subregional levels", the General Assembly recognized the crucial role of conventional arms control in promoting regional and international peace and security, and decided to give urgent consideration to the issues involved in conventional arms control at the regional and subregional levels. The Assembly further requested the Conference on Disarmament to consider the formulation of principles that can serve as a framework for regional agreements on conventional arms control.

(*f*) Other Issues

(i) *Terrorism and disarmament*

On 18 January 2008 the Counter-Terrorism Committee, established pursuant to Security Council resolution 1373 (2001), submitted its second report[125] on the implementation of resolution 1624 (2005), which called upon all States to take a number of steps in connection with the imperative to combat terrorism in all its forms, including those aimed at legally prohibiting and preventing incitement to commit terrorist acts.

a. General Assembly

In the area of terrorism and disarmament, the General Assembly adopted on 2 December 2008, on the recommendation of the First Committee, resolution 63/60 entitled "Measures to prevent terrorists from acquiring weapons of mass destruction", in which the Assembly called upon all Member States to support international efforts to prevent terrorists from acquiring weapons of mass destruction and their means of delivery, and to strengthen their national capacity in this regard. A further appeal was made to all Member States to consider early accession to and ratification of the International Convention for the Suppression of Acts of Nuclear Terrorism.[126]

b. Security Council

In 2008, the Security Council adopted three resolutions on terrorism and disarmament, under Chapter VII of the Charter, of which one highlighted below.[127]

On 27 September 2008, the Security Council adopted resolution 1835 (2008), reaffirming its commitment to the Treaty on the Non-Proliferation of Nuclear Weapons as well as its commitment to an early negotiated solution to the Iranian nuclear issue. The Security

[125] The Second report is annexed to the letter dated 18 January 2008 to the President of the Security Council, S/2008/29.

[126] Annexed to General Assembly 59/290 of 13 April 2005.

[127] See also Security Council resolution 1803 (2008).

Council further called upon the Islamic Republic of Iran to comply fully and promptly with its obligations under prior Security Council resolutions[128] and to meet the requirements of the IAEA Board of Governors.

(ii) *Outer space*

The Conference on Disarmament addressed the issue of the prevention of an arms race in outer space in plenary sessions, as well as through three rounds of informal deliberations.[129] During the first session, China and the Russian Federation presented the text of a draft treaty entitled the "Treaty on the Prevention of the Placement of Weapons in Outer Space and of the Threat or Use of Force Against Outer Space Objects". Under the proposed treaty, States would commit not to place in orbit any objects carrying any kind of weapons. The draft treaty, which also repeatedly emphasized use of space for peaceful purposes, was welcomed by numerous delegations.

General Assembly

The General Assembly adopted on 2 December 2008, on the recommendation of the First Committee, two resolutions in the area of outer space. In its resolution 63/40, entitled "Prevention of an arms race in outer space", the Assembly recognized that prevention of an arms race in outer space would avert a grave danger for international peace and security. The Assembly further emphasized the paramount importance of strict compliance with existing arms limitation and disarmament agreements relevant to outer space by all States.

In its resolution 63/68, entitled "Transparency and confidence-building measures in outer space activities", the Assembly continued to assert that an enhanced level of transparency in armaments contributed greatly to confidence-building and security among States, and that the establishment of the United Nations Register of Conventional Arms[130] therefore constituted an important step forward in the promotion of transparency in military matters. The Assembly further invited the Conference on Disarmament to consider continuing its work undertaken in the field of transparency in armaments.

(iii) *Relationship between disarmament, development and education*[131]

General Assembly

Pursuant to General Assembly resolution 62/48 of 5 December 2007, the Secretary-General submitted a report to the General Assembly at its 63rd session on the relationship between disarmament and development.[132] The report summarized the United Nations activities in implementing the action programme adopted at the 1987 International Conference on the Relationship between Disarmament and Development, activities related to the Govern-

[128] See resolutions 1696 (2006), 1737 (2006), 1747 (2007) and 1803 (2008).

[129] For the Final Record of the 1111th Plenary Meeting of the Conference on Disarmament, see CD/PV.1111.

[130] See General Assembly resolution 46/36 L.

[131] See also General Assembly resolution 63/81of 2 December 2008 and decision 63/518.

[132] A/63/134.

mental Group of Experts' recommendations on the relationship between disarmament and development,[133] and information received from Governments on the subject.

On 2 December 2008, the General Assembly, on the recommendation of the First Committee, adopted resolution 63/52 entitled "Relationship between disarmament and development", in which the Assembly encouraged relevant regional and subregional organizations, non-governmental organizations and research institutes to incorporate issues regarding the relationship between disarmament and development in their agendas. The international community was also encouraged to make greater efforts to integrate disarmament, humanitarian and development activities.

On the same date, the General Assembly also adopted, on the recommendation of the First Committee, resolution 63/70 entitled "United Nations Study on disarmament and non-proliferation education", in which the Assembly made a request to the Secretary-General to prepare a report reviewing the results of the implementation of the recommendations contained in the United Nations study on disarmament and non-proliferation education, and to submit it to the General Assembly at its sixty-fifth session.

(iv) *Multilateralism and disarmament*

General Assembly

On 2 December 2008, the General Assembly adopted, on the recommendation of the First Committee, resolution 63/50 entitled "Promotion of multilateralism in the area of disarmament and arms control", in which it recognized the complementarity of bilateral, plurilateral and multilateral negotiations and reaffirmed the absolute validity of multilateral diplomacy in the field of disarmament and non-proliferation.

(v) *Gender and disarmament*

Security Council

On 19 June 2008, the Security Council adopted resolution 1820 (2008), in which it stressed that sexual violence, when used or commissioned as a tactic of war in order to deliberately target civilians or as a part of a widespread or systematic attack against civilian populations, can significantly exacerbate situations of armed conflict and may impede the restoration of international peace and security, and affirmed in this regard that effective steps to prevent and respond to such acts of sexual violence can significantly contribute to the maintenance of international peace and security. The Council further demanded the immediate and complete cessation by all parties to armed conflict of all acts of sexual violence against civilians. The Council urged the Secretary-General and his Special Envoys to invite women to participate in discussions pertinent to the prevention and resolution of conflict, the maintenance of peace and security, and post-conflict peacebuilding, and encouraged all parties to such talks to facilitate the equal and full participation of women at decision-making levels. The Secretary-General was also requested to, *inter alia*, submit

[133] See note by Secretary-General containing the report of the GGE on the relationship between disarmament and development in the current international context of 23 June 2004, A/59/119.

a report to the Council by 30 June 2009 on the implementation of the present resolution in the context of situations which were on the agenda of the Council.

(vi) *Environmental norms and disarmament agreements*

General Assembly

Pursuant to General Assembly resolution 62/38 of 5 December 2007, the Secretary-General submitted to the sixty-third session of the General Assembly a report[134] containing a compilation of communications from Member States on the question of observance of environmental norms in the drafting and implementation of agreements on disarmament and arms control.

On 2 December 2008, the General Assembly, upon the recommendation of the First Committee, adopted resolution 63/51 entitled "Observance of environmental norms in the drafting and implementation of agreements on disarmament and arms control". In the resolution, the Assembly, mindful of the detrimental environmental effects of the use of nuclear weapons, reaffirmed that international disarmament forums should take into full account the relevant environmental norms in negotiating treaties and agreements on disarmament and arms limitation. States should further endeavour to ensure compliance with these norms in the implementation of treaties and conventions to which they are parties. The Assembly also took note of the report submitted by the Secretary-General.

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-seventh session[135] at the United Nations Office at Vienna from 31 March to 11 April 2008. Two new key items, capacity-building in space law and exchange of information on national legislation relevant to the peaceful exploration and use of outer space, were on the agenda.

In the context of capacity-building, the areas of education and training as well as research and information dissemination were identified as in need of increased attention. The Subcommittee noted that addressing these areas would enable Member States to put in place the foundation necessary for the universal and informed application of the existing international legal regime governing the activities of States in outer space, and for the further development of the regime. The Subcommittee noted that capacity-building, particularly in developing countries, could be strengthened further by, *inter alia*, the creation of regional and international space law information networks and partnerships as well as the establishment of a fellowship programme to fund the educational pursuits of young professionals in the field.

In conjunction with these matters, the United Nations Office for Outer space (UNOOSA) presented its efforts to develop a curriculum for a basic course on space law that would initiate

[134] A/63/116.

[135] For the report of the Legal Subcommittee, see A/AC.105/917.

space law studies in the four Regional Centres for Space Science and Technology Education, affiliated to the United Nations, which are located in Africa, Asia and South America. The Office also presented an updated directory of education opportunities in space law including information on fellowships and scholarships available on its website.[136]

Under the second new agenda item entitled "General Exchange of information on national legislation relevant to the peaceful explorations and use of outer space", the Legal Subcommittee noted that the exchange of information on national legislation would allow it to examine the main developments taking place at the national level in order to identify common principles, norms and procedures. Such information could also be of value to any State involved in space activities in their efforts to establish a domestic regulatory framework. In addition, information dissemination could stimulate the development of national space laws to the particular benefit of developing countries. The view was also expressed that, although the development of national legislation was crucial to the administration of space activities, it could only have a complementary character to international space law. The Subcommittee will continue to consider this item under the multi-year work plan for the period of 2008-2011. In 2009, a working group on this item will be established to examine the responses received by Member States on their manner of regulating governmental and non-governmental space activities.

Regarding the agenda item entitled "Status and application of the five United Nations treaties on outer space",[137] the Working Group on this item addressed, in particular, the low participation of States in the Agreement Governing the Activities of States on the Moon and Other Celestial Bodies.[138] It further reviewed activities currently being carried out on the moon and other celestial bodies or to be carried out in the near future and discussed whether existing international rules adequately addressed activities on the moon and other celestial bodies. The Working Group also noted that national legislation governing activities on the moon existed in a number of States involved in space activities. It also agreed that the Subcommittee, at its forty-eighth session in 2009, should continue its discussion on the issue.

Under the agenda item, "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",[139] the Subcommittee reviewed the advancements made by the International Institute for the Unification of Private Law (UNIDROIT) in developments regarding the above mentioned draft protocol including the results of the second meeting, held in New York on 19 and 20 June 2007, on the views of industry and Governments regarding how best to finalize the expansion of the Convention to cover space assets.

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[136] http://www.oosa.unvienna.org.

[137] The treaties include: Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and other Celestial Bodies, 1967 (General Assembly resolution 222 (XXI), annex); Agreement on the Rescue of Astronauts, the Return of Astronauts and the Return of Objects Launched into Outer Space, 1968 (General Assembly resolution 2345 (XXII), annex); Convention on International Liability for Damage Caused by Space Objects, 1972 (General Assembly resolution 2777 (XXVI), annex); Convention on Registration of Objects Launched into Outer Space,1975 (United Nations, *Treaty Series,* vol. 1023, p. 15) and Agreement Governing the Activities of States on the Moon and Other Celestial Bodies, 1979 (United Nations, *Treaty Series,* vol. 1363, p. 3).

[138] United Nations, *Treaty Series* , vol. 1363, p. 3.

[139] United Nations, *Treaty Series*, vol. 2307, p. 285.

Regarding matters related to the definition and delimitation of outer space and the character and utilization of the geostationary orbit, the related Working Group considered, *inter alia,* responses by Member States to questionnaires prepared by the Secretariat on possible legal issues regarding aerospace objects,[140] on the general definition and delimitation of outer space[141] and in relation to national legislation and practice.[142] On the basis of its discussions, the Working Group decided to suspend Member State questionnaires related to aerospace objects, but to continue to address to the Governments of Member States, through the Secretariat, existing questions regarding the definition and delimitation of outer space as related to national practice and legislation.

(*b*) General Assembly

On 2 December 2008, the General Assembly adopted two resolutions on the recommendation of the First Committee related to the legal uses of outer space: resolution 63/40 entitled "Prevention of an arms race in outer space", and resolution 63/68 entitled "Transparency and confidence-building measures in outer space activities".

Furthermore, on 5 December 2008, the General Assembly, on the recommendation of the Fourth Committee, adopted resolution 63/90 entitled "International Cooperation in the peaceful uses of outer space", in which it requested entities of the United Nations system and other international organizations to continue to enhance their cooperation with the Committee on the Peaceful Uses of Outer Space and to provide it with reports on the issues dealt with in the work of the Committee and its subsidiary bodies.

[140] A/AC.105/635 and Add.1-16, Add.7/Corr.1 and Add.11/Corr.1

[141] A/AC.105/889 and Add.1

[142] A/AC.105/865 and Add.1-3

5. Human Rights[143]

(*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.[144] 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 human rights situations that require the attention of the Assembly.

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.[145] The Council also assumed 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.[146] Moreover, based on the previous "1503 procedure", 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.[147]

In 2008, the Human Rights Council held its seventh, eighth, and ninth regular sessions[148] and three special sessions on "Human rights violations emanating from Israeli mili-

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[143] 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, Committee on the Protection of the Rights of All Migrant Workers and Members of their Families and 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 at http://treaties.un.org/Pages/ParticipationStatus.aspx.

[144] 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.

[145] 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 home page of the Human Rights Council, at www.ohchr.org/EN/HRBodies/UPRmain.aspx.

[146] See Human Rights Council decision 1/102 of 30 June 2006.

[147] More detailed information on the mandate, work and methods of the Human Rights Council is available online at http://www2.ohchr.org/english/bodies/hrcouncil.

[148] For the reports on the seventh, eighth and ninth sessions respectively, see Report of the Human Rights Council, General Assembly, *Official Records*, *Sixty-third session, Supplement No. 53* (A/63/53 and Add.1).

tary incursions in the Occupied Palestinian Territory, including the recent ones in occupied Gaza and West Bank town of Nablus",[149] "The negative impact on the realization of the right to food of the worsening of the world food crisis, caused inter alia by the soaring food prices"[150] and "The situation of the human rights in the East of the Democratic Republic of the Congo".[151]

(ii) *Human Rights Council Advisory Committee*

The Human Rights Council Advisory Committee was established pursuant to Human Rights Council resolution 5/1, and replaced the Sub-Commission for the Promotion and Protection of Human Rights as the main subsidiary body of the Human Rights Council. The Advisory Committee is composed of eighteen experts, and is to function as a think-tank for the Council, working under its direction and providing 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 held its first session in Geneva from 4 to 15 August 2008.[152]

(iii) *Human Rights Committee*

The Human Rights Committee was established under the International Covenant on Civil and Political Rights of 1966,[153] to monitor the implementation of the Covenant and its Optional Protocols in the territory of States parties. In 2008, the Committee held its ninety-second session from 17 March to 4 April in New York, and its ninety-third and ninety-fourth sessions from 7 to 25 July and from 13 to 31 October, respectively, in Geneva.[154]

(iv) *Committee on Economic, Social and Cultural Rights*

The Committee on Economic, Social and Cultural Rights was established by the Economic and Social Council[155] to monitor the implementation of the International Covenant

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[149] Sixth Special session held in Geneva from 23-24 January 2008. See the Report on the Human Rights Council on its Sixth Special Session, General Assembly, *Official Records, Sixty-third session, Supplement No. 53* (A/63/53).

[150] Seventh Special session of the Human Rights Council held in Geneva on 22 May 2008. See Report of the Human Rights Council on its Seventh Special Session, General Assembly, *Official Records, Sixty-third session, Supplement No. 53* (A/63/53).

[151] Eighth Special session of the Human Rights Council held on 28 November 2008. See Report of the Human Rights Council on its Eighth Special Session, General Assembly, *Official Records, Sixty-fourth session* (A/64/53).

[152] For the report of the first session of the Advisory Committee, see A/HRC/10/2-A/HRC/AC/2008/1/2.

[153] United Nations, *Treaty Series*, vol. 999, p. 171.

[154] For the reports of the ninety-second and ninety-third sessions, see A/63/40 (Vol. I) and A/63/40 (Vol. II). For the report of the ninety-fourth session, see A/64/40 (vol. I).

[155] Economic and Social Council resolution 1985/17 of 28 May 1985.

on Economic, Social and Cultural Rights of 1966[156] by its States parties. In 2008, the Committee held its fortieth and forty-first sessions from 28 April to 16 May and from 3 to 21 November respectively, in Geneva.[157]

(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[158] to monitor the implementation of this Convention by its States parties. In 2008, the Committee held its seventy-second and seventy-third sessions in Geneva from 18 February to 7 March 2008 and from 28 July to15 August, respectively.[159]

(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[160] to monitor the implementation of this Convention by its States parties. In 2008, the Committee held its fourteenth session in Geneva from 14 January to 1 February, its forty-second session from 30 June to 18 July in New York and its forty-third session from 20 October to 7 November, in Geneva.[161]

(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[162] to monitor the implementation of this Convention by its States parties. In 2008, the Committee held its fortieth and forty-first sessions from 28 April to 16 May and from 3 to 21 November, respectively, in Geneva.[163] The Subcommittee on Prevention of Torture, established in October 2006 under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,[164] held its fourth, fifth and sixth

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[156] United Nations, *Treaty Series*, vol. 993, p. 3.

[157] The reports of the sessions can be found in *Official Records of the Economic and Social Council, Supplement No. 2* (E/2009/22).

[158] United Nations, *Treaty Series*, vol. 660, p. 195.

[159] The respective reports can be found in *Official Records of the General Assembly, Supplement No. 18* (A/63/18).

[160] United Nations, *Treaty Series*, vol. 1249, p. 13.

[161] The respective reports can be found in *Official Records of the General Assembly, Supplement No. 38* (A/63/38).

[162] United Nations, *Treaty Series*, vol. 1465, p. 85.

[163] 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).

[164] The Optional Protocol was adopted in General Assembly resolution 57/199 of 18 December 2002. For further information on the mandate of the Subcommittee, see the *United Nations Juridical Yearbook* for 2006, Chapter III, section 6.

sessions from 11 to 15 February 2008, from 23 to 27 June 2008 and from 17 to 21 November, respectively.

(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[165] to monitor the implementation of this Convention by its States parties. In 2008, the Committee held its forty-seventh, forty-eighth, and forty-ninth sessions in Geneva, from 14 January to 1 February, from 19 May to 6 June, and from 15 September to 3 October, respectively.[166]

(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[167] to monitor the implementation of this Convention by its States parties in their territories. In 2008, the Committee held its eighth and ninth sessions from 14 to 25 April and from 24 to 28 November 2008, respectively, in Geneva.[168]

(x) *Committee on the Rights of Persons with Disabilities*

The Committee on the Rights of Persons with Disabilities is a body of independent experts established under the Convention on the Rights of Persons with Disabilities and its Optional Protocol,[169] which has the mandate to monitor the implementation of the Convention by the States Parties. The Committee is to meet in Geneva and hold two regular sessions per year. No sessions were held in 2008. On 3 November 2008, the members of the Committee were elected by the Conference of the States parties to the Convention, which held its first session in New York on 31 October and 3 November 2008.

Under the Convention, all States parties undertook the obligation to submit regular reports to the Committee on the manner in which they implement the rights contained therein, initially within two years of accepting the Convention, and thereafter every four years. The Committee shall 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.

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[165] United Nations, *Treaty Series*, vol. 1577, p. 3.

[166] The report of the forty-seventh session can be found in *Official Records of the General Assembly, Supplement No.* 41.

[167] General Assembly resolution 45/158 of 18 December 1990.

[168] The reports can be found in *Official Records of the General Assembly, Supplement No. 48* (A/63/48).

[169] Adopted on 13 December 2006 at the United Nations Headquarters in New York, opened for signature on 30 March 2007, and entered into force on 3 May 2008, in accordance with Article 45 (1).

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*

In its resolution 7/33, entitled "From rhetoric to reality: a global call for concrete action against racism racial discrimination, xenophobia and related intolerance" adopted on 28 March 2008, the Human Rights Council saluted all positive developments in the fight against racism, racial discrimination, xenophobia and related intolerance and urged Governments that have not done so to issue formal apologies to the victims of past and historic injustices and to take all necessary measures to achieve the healing and reconciliation of and the restoration of dignity to those victims, and to take decisive steps to combat racism in all its forms and manifestations. In the same report, the Council acknowledged the report of the Working Group of Experts on People of African Descent on its eighth session,[170] and the report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance.[171] The Council further welcomed the convening of the first part of the sixth session of the Intergovernmental Working Group on the Effective Implementation of the Durban Declaration and Programme of Action[172] in January 2008, during which the Working Group made an initial contribution to the preparatory process of the Durban Review Conference.

On 18 June 2008, the Human Right Council adopted resolution 8/13 on the "Elimination of discrimination against persons affected by leprosy and their family members". In that resolution, the Council encouraged States to share best practices on combating discrimination against persons affected by leprosy and their family members and also on their efforts to achieve full recovery from, and manage, this disease. The Council also called upon Governments to take effective measures to eliminate any type of discrimination against persons affected by leprosy and their family members, including awareness-raising. The Office of the United Nations High Commissioner for Human Rights was requested to include the issue of discrimination against persons affected by leprosy and their family members as an important matter in its human rights education and awareness-raising activities.

(ii) *General Assembly*

On 18 December 2008, the General Assembly adopted resolution 63/162 entitled "Inadmissibility of certain practices that contribute to fuelling contemporary forms of racism, racial discrimination, xenophobia and related intolerance", in which it took note of the report of the Special Rapporteur on contemporary forms of racism, racial discrimination,

[170] A/HRC/7/36.

[171] A/HRC/7/19.

[172] A/HRC/7/36.

xenophobia and related intolerance,[173] 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. Noting with concern the increase in the number of racist incidents in several countries and the rise of skinhead groups, which had been responsible for many of these incidents, as well as the resurgence of racist and xenophobic violence targeting members of ethnic, religious or cultural communities and national minorities, the General Assembly emphasized the need to take the necessary measures to put an end to such practices, and called upon States to take more effective measures in accordance with international human rights law to combat those phenomena and the extremist movements, which posed a real threat to democratic values.

On 24 December 2008 the General Assembly adopted, on the recommendation of the Third Committee, resolution 63/242 entitled "Global efforts for the total elimination of racism, racial discrimination, xenophobia and related intolerance and the comprehensive implementation of and follow-up to the Durban Declaration and Programme of Action" and resolution 63/243 entitled "International Convention on the Elimination of All Forms of Racial Discrimination".

In its resolution 63/242 of 24 December 2008, the General Assembly called upon all States, in accordance with the commitments undertaken in the Durban Programme of Action,[174] to take all necessary measures to combat incitement to violence motivated by racial hatred, including through the misuse of print, audio-visual and electronic media and new communication technologies, and, in collaboration with service providers, to promote the use of such technologies, in conformity with international standards of freedom of expression and taking all necessary measures to guarantee that right. The States were furthermore encouraged to include in their educational curricula and social programmes at all levels, knowledge of and tolerance and respect for all cultures, civilizations, religions, peoples and countries, as well as information on the follow-up to, and implementation of, the Durban Declaration and Programme of Action.

The Assembly expressed grave concern at the fact that universal ratification of the International Convention on the Elimination of All Forms of Racial Discrimination[175] had not been attained by 2005 in accordance with commitments under the Durban Declaration and Programme of Action, and called upon those States that had not yet done so to accede to the Convention as a matter of urgency. The Assembly recalled that the Committee on the Elimination of Racial Discrimination held the prohibition of the dissemination of ideas based on racial superiority or racial hatred to be compatible with the right to freedom of opinion and expression as outlined in the Universal Declaration of Human Rights and in the Convention. Appreciation was expressed by the Assembly for the commitment of the United Nations High Commissioner for Human Rights to contribute to the success-

[173] A/63/339.

[174] For further information, see Report of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, A/CONF.189/12 and Corr.1, chap. I.

[175] United Nations, *Treaty Series*, vol. 660, No. 9464.

ful outcome of the Durban Review Conference, including her appeal to all Member States and other stakeholders to participate in the Durban Review Conference.

In its resolution 63/243, the General Assembly took note of the reports of the Committee on the Elimination of Racial Discrimination on its seventieth, seventy-first,[176] seventy-second and seventy-third[177] sessions and expressed its concern at the fact that a great number of reports continued to be overdue, which constituted an obstacle to the full implementation of the Convention. States parties to the Convention whose reports were seriously overdue were encouraged to avail themselves of the advisory services and technical assistance that the Office of the United Nations High Commissioner for Human Rights can provide for the preparation of the reports.

The Assembly authorized the Committee on the Elimination of Racial Discrimination to meet for an additional week per session, as a temporary measure, with effect from August 2009, until 2011. The Assembly also took note of the report of the Secretary-General on the status of the International Convention on the Elimination of All Forms of Racial Discrimination,[178] and urged States parties to comply fully with their obligations under the Convention and to take into consideration the concluding observations and general recommendations of the Committee on the Elimination of Racial Discrimination. It reaffirmed its conviction that ratification of, or accession to, the Convention on a universal basis and the implementation of its provisions were necessary for the effectiveness of the fight against racism, racial discrimination, xenophobia and related intolerance and for the implementation of the commitments undertaken under the Durban Declaration and Programme of Action.

(*c*) Right to development and poverty reduction

(i) *Human Rights Council*

On 28 March 2008, the Human Rights Council adopted resolution 7/27 in which it affirmed that the fight against extreme poverty must remain a high priority for the international community, and noted with satisfaction the report of the United Nations High Commissioner for Human Rights on the draft guiding principles on extreme poverty and human rights: the rights of the poor.[179] The Council further invited the Office of the High Commissioner for Human Rights to submit a report to the Council, no later than at its last session of 2009 to allow it to take a decision on the ways forward with a view to a possible adoption of guiding principles on the rights of persons living in extreme poverty.

At its eight session, on 18 June 2008, the Human Rights Council adopted resolution 8/11 entitled "Human rights and extreme poverty". In that resolution, the Council acknowledged the report of the Independent Expert on extreme poverty[180] and took note of his proposal to define extreme poverty as the combination of income poverty, human development poverty and social exclusion. It further decided to extend the mandate of the Independent Expert for

[176] *Official Records of the General Assembly, Sixty-second Session, Supplement No. 18* (A/62/18).

[177] *Ibid*., *Sixty-third Session, Supplement No. 18* (A/63/18).

[178] A/63/473.

[179] A/HRC/7/32.

[180] A/HRC/7/15.

a period of three years. The Council requested the Office of the United Nations High Commissioner for Human Rights to give high priority to the question of the relationship between extreme poverty and human rights, and invited it to pursue further work in this area, integrating and cooperating fully with the Independent Expert in the various activities, notably the Social Forum and the consultation on the draft guiding principles on extreme poverty.

During its ninth session, on 24 September 2008, the Human Rights Council adopted resolution 9/3 entitled "The right to development". In that resolution, the Council welcomed the report of the Working Group on the right to development,[181] and decided, *inter alia*, to endorse the work plan for the task force for the period 2008-2010, outlined in paragraph 43 of the report of the Working Group, which would ensure that the criteria for the periodic evaluation of global partnerships, as identified in Millennium Development Goal 8, to be submitted by the task force to the Working Group at its eleventh session in 2010, was extended to other components of Millennium Development Goal 8, and to renew the mandate of the Working Group until it completes the tasks entrusted to it by Council in its resolution 4/4.

(ii) *General Assembly*

The General Assembly adopted on 18 December 2008 resolution 63/176 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 expressed concern at the negative impact of international financial turbulence on social and economic development and on the full enjoyment of all human rights, particularly in the light of the current international financial challenges. Further expressing concern at the negative impact of the rising global food and energy challenges on social and economic development and on the full enjoyment of all human rights, the Assembly recognized that globalization should be guided by the fundamental principles that underpin the corpus of human rights, such as equity, participation, accountability, non-discrimination at both the national and the international levels, respect for diversity, tolerance and international cooperation and solidarity.

In its resolution 63/178 on "The right to development", adopted on 18 December 2008, 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.

The General Assembly adopted on 19 December 2008 resolution 63/230 entitled "Second United Nations Decade for the Eradication of Poverty (2008–2017)", in which it expressed concern that, after the First United Nations Decade for the Eradication of Poverty (1997–2006) and midway to the 2015 Millennium Development Goals target date,

[181] A/HRC/9/17.

while there had been progress in reducing poverty in some regions, this progress had been uneven and the number of people living in poverty in some countries continued to increase, with women and children constituting the majority of the most affected groups, especially in the least developed countries and particularly in sub-Saharan Africa. The Assembly further expressed concern over the number of people living in poverty, which was higher than previously estimated, despite significant progress, and over the current financial and food insecurity crises and unpredictable energy prices that may pose significant challenges for the achievement of the internationally agreed development goals, including the Millennium Development Goals.

In the same resolution, the Assembly underlined the priority and urgency given by the Heads of State and Government to the eradication of poverty, as expressed in the outcomes of the major United Nations conferences and summits in the economic and social fields. It also took note of the report of the Secretary-General on the implementation of the Second United Nations Decade for the Eradication of Poverty (2008–2017),[182] and reaffirmed that the objective of the Second United Nations Decade was to support the follow-up to the implementation of the internationally agreed development goals, including the Millennium Development Goals, related to the eradication of poverty and to coordinate international support to that end.

The Assembly further reaffirmed that each country should take primary responsibility for its own development and that the role of national policies and strategies could not be overemphasized in the achievement of sustainable development and poverty eradication, and recognized that increased effective national efforts should be complemented by, *inter alia*, concrete, effective and supportive international programmes. Emphasis was put upon the need to accord the highest priority to poverty eradication within the United Nations development agenda, while stressing the importance of addressing the causes and challenges of poverty, and upon education and training considered as critical factors in empowering those living in poverty, while recognizing the complexity of the challenge of poverty eradication.

While calling upon the international community to continue to give priority to the eradication of poverty, and upon donor countries in a position to do so to support the effective national efforts of developing countries in this regard, through adequate predictable financial resources on either a bilateral or a multilateral basis, the General Assembly also welcomed recent efforts and initiatives to enhance the quality of aid and to increase its impact, including the Paris Declaration on Aid Effectiveness and the Accra Agenda for Action.[183] The Assembly furthermore recognized that, for developing countries to reach the targets set in the context of national development strategies for the achievement of the internationally agreed development goals, and for such poverty eradication strategies to be effective, it was imperative that developing countries increase their efforts to be integrated into the world economy in order to share the benefits of globalization.

On 19 December 2008, the General Assembly adopted resolution 63/229 entitled "Role of microcredit and microfinance in the eradication of poverty" on the recommendation of

[182] A/63/190.

[183] A/63/539, annex.

the Second Committee, in which it took note of the report of the Secretary-General,[184] and underlined the need for greater access to microfinance, including microcredit, in developing countries, in particular for small farmers, which can contribute to increased agricultural productivity and rural development. The Assembly also underlined the importance of strengthening domestic financial sectors as a source of capital by making them inclusive, thus expanding access to financial services. The Assembly noted that, despite progress, there was still lack of relevant statistical data on inclusive financial sectors, in particular microcredit and microfinance programmes, in particular at the national and regional levels, and in this regard invited the international community, in particular the donor community, to support developing countries in collecting and preserving necessary statistical data and information on this issue.

The General Assembly encouraged Member States to adopt coherent financial regulatory frameworks, including in consultation with microfinance providers which can effectively protect the stability of their national financial systems and increase access of the poor, microenterprises and small enterprises to financial services. States were also encouraged to protect consumers, in particular the poor, and in this regard the Assembly invited the development partners to support the efforts of developing countries in the promotion of entrepreneurship development programmes, including for microenterprises and small and medium-sized enterprises. The Assembly furthermore recognized that the current financial crisis could adversely impact financial flows to microcredit and microfinance institutions as well as the services that they provide to the poor, and emphasized that such instruments should be protected, as appropriate, from potential credit deficiency.

In 2008, General Assembly adopted two other resolutions concerning the right to development and poverty reduction; resolution 63/142, adopted on 11 December 2008, entitled "Legal empowerment of the poor and eradication of poverty", and resolution 63/175, adopted on 18 December 2008, entitled "Human rights and extreme poverty". In the former resolution, the General Assembly reaffirmed that each country must take primary responsibility for its own development and stressed the importance of sharing best national practices in the area of legal empowerment of the poor. In the latter resolution, concerned by the challenges faced today, including those derived from the food crisis, the energy crisis and the financial crisis, and by their impact on the increase in the number of people living in extreme poverty and their negative effect on the capacity of all States, especially developing countries, to fight extreme poverty, the General Assembly encouraged the international community to strengthen its efforts to address challenges that were contributing to extreme poverty, including those posed by the current food, energy and financial crises in all parts of the world, especially in developing countries, by enhancing its cooperation to help build national capacities. The Assembly furthermore took note of the report of the United Nations High Commissioner for Human Rights to the General Assembly.[185]

[184] A/63/159.

[185] A/63/274.

(*d*) Right of people to self-determination

(i) *Universal realization of the right of peoples to self-determination*

General Assembly

On 18 December 2008, The General Assembly adopted, on the recommendation of the Third Committee, resolution 63/163 entitled "Universal realization of the right of peoples to self-determination". In the resolution, the Assembly took note of the report of the Secretary-General,[186] and 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 had resulted in the suppression of the right of peoples to self-determination and other human rights in certain parts of the world, and called upon those States responsible to cease immediately their military intervention in, and occupation of, foreign countries and territories and all acts of repression, discrimination, exploitation and maltreatment, in particular the brutal and inhuman methods reportedly employed for the execution of those acts against the peoples concerned.

(ii) *Mercenaries*

a. Human rights Council

On 28 March 2008, at its seventh session, the Human Rights Council adopted resolution 7/21 entitled "Mandate of 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". In the resolution, the Council acknowledged with appreciation the work and contributions made by 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, and took with appreciation note of its latest report.[187] The Council decided to extend the mandate of the Working Group for a period of three years to, *inter alia*, elaborate and present concrete proposals on possible complementary and new standards aimed at filling existing gaps, as well as general guidelines or basic principles encouraging the further protection of human rights, in particular the right of peoples to self-determination, while facing current and emergent threats posed by mercenaries or mercenary-related activities. The Working Group was further requested to seek opinions and contributions from Governments and intergovernmental and non-governmental organizations on questions relating to its mandate, and to study and identify sources and causes, emerging issues, manifestations and trends regarding mercenaries or mercenary-related activities and their impact on human rights, particularly on the right of peoples to self-determination. In addition, the Council requested the Office of the High Commissioner for Human Rights to, as a matter of priority, publicize the adverse effects of the activities of mercenaries on the right of peoples to

[186] For further information, see report of the Secretary-General on the right of peoples to self-determination, A/63/254.

[187] A/HRC/7/7.

self-determination and, when requested and where necessary, to render advisory services to States that were affected by those activities, and to inform the Council, in a timely manner, of the dates and places for the convening of the other regional governmental consultations on this matter, in conformity with paragraph 15 of General Assembly resolution 62/145, bearing in mind that this process may lead to the holding of a high-level round table of States, under the auspices of the United Nations.

b. General Assembly

On 18 December 2008, the General Assembly adopted, on the recommendation of the Third Committee, resolution 63/164 entitled "Use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination". In the resolution, the Assembly, taking note of the report of the Working Group,[188] stressed the importance for the Working Group of looking into sources and root causes, as well as the political motivations of mercenaries and for mercenary-related activities. The Group was requested to continue the work already done by the previous Special Rapporteurs on the strengthening of the international legal framework for the prevention and sanction of the recruitment, use, financing and training of mercenaries, taking into account the proposal for a new legal definition of a mercenary.[189] The Group was further requested to elaborate and present concrete proposals on possible complementary and new standards aimed at filling existing gaps, as well as general guidelines or basic principles encouraging the further protection of human rights, in particular the right of peoples to self-determination. The Group was also requested to continue to take into account the fact that mercenary activities continued to occur in many parts of the world and were taking on new forms, manifestations and modalities, and in this regard its members were requested to continue to pay particular attention to the impact of the activities of private companies offering military assistance, consultancy and security services on the international market on the enjoyment of human rights and the exercise of the right of peoples to self-determination.

(*e*) Economic, social and cultural rights

(i) *The Optional Protocol to the International Covenant on Economic, Social and Cultural Rights*[190]

General Assembly

On 10 December 2008, the General Assembly adopted, on the recommendation of the Third Committee, resolution 63/117 entitled "Optional Protocol to the International Covenant on Economic, Social and Cultural Rights". The Assembly adopted the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, which was annexed to the resolution. The Assembly further recommended that the Optional Protocol be opened for signature at a signing ceremony to be held in 2009.

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[188] See A/63/325.

[189] Drafted by the Special Rapporteur in his report to the Commission on Human Rights at its sixtieth session. For further information, see E/CN.4/2004/15, para. 47.

[190] For the text of the Optional Protocol, see chapter IV of this publication.

(ii) *Right to food*

a. Human Rights Council

On 27 March 2008, the Human Rights Council adopted resolution 7/14 entitled "The right to food", in which it affirmed that hunger constitutes an outrage and a violation of human dignity, and therefore required the adoption of urgent measures at the national, regional and international levels for its elimination. The Council expressed its concern that women and girls were disproportionately affected by hunger, food insecurity and poverty, in part as a result of gender inequality and discrimination; that in many countries, girls are twice as likely as boys to die from malnutrition and preventable childhood diseases, and that it was estimated that almost twice as many women as men suffered from malnutrition, and encouraged all States to take action to address gender inequality and discrimination against women, in particular where it contributed to the malnutrition of women and girls. The Council further took note of the report of the Special Rapporteur,[191] and of his valuable work in the promotion of the right to food in all parts of the world and expressed its appreciation for the work and commitment of the first mandate-holder to achieving the realization of the right to food.

On 22 May 2008, the Human Rights Council held a special session on "The negative impact on the realization of the right to food of the worsening of the world food crisis, caused *inter alia* by the soaring food prices". On the same day, the Council adopted resolution S-7/1, entitled "The negative impact of the worsening of the world food crisis on the realization of the right to food for all". In the resolution, the Council expressed its grave concern at the worsening of the world food crisis, which seriously undermined the realization of the right to food for all, and the achievement of the Millennium Development Goals. The Council called upon Member States of the United Nations to and other relevant stakeholders to participate actively in the High-level Conference on World Food Security: the Challenges of Climate Change and Bioenergy, to be held from 3 to 5 June 2008, in Rome, organized by the Food and Agriculture Organization of the United Nations (FAO), and invited FAO to extend an invitation to the United Nations High Commissioner for Human Rights and to the Special Rapporteur on the right to food to attend and actively participate in the aforementioned High-level Conference, so as to help to mainstream a human rights perspective in the analysis of the world food crisis.

At its ninth session, on 24 September 2008, the Human Rights Council adopted resolution 9/6 entitled "Follow-up to the seventh special session of the Human Rights Council on the negative impact of the worsening of the world food crisis on the realization of the right to food for all". The Council acknowledged with appreciation the report of the Special Rapporteur,[192] and took note of his recommendations. The Council encouraged all States to invest or promote investment in agriculture and rural infrastructure in a manner that empowers the most vulnerable and affected by the current crisis in order to ensure their realization of the right to food. The Council further encouraged all relevant international organizations and agencies to bring to their studies, research, reports and resolutions on the issue of food security a human rights perspective and the need for the realization of the right to food for all, and requested the Special Rapporteur to report on the implementation

[191] A/HRC/7/5.

[192] A/HRC/9/23.

of the present resolution to the Council at its twelfth session, including on the progress made and obstacles encountered in relation with the implementation at the national level of the measures and best practices adopted by States to respond to the global food crisis.

b. General Assembly

At its sixty-third session, the General Assembly adopted, on the recommendation of the Third Committee, resolution 63/187 entitled "The right to food", dated 18 December 2008. In the resolution, the Assembly reaffirmed that hunger constitutes an outrage and a violation of human dignity and therefore required the adoption of urgent measures at the national, regional and international levels for its elimination, and recognized the advances reached through South-South cooperation in developing countries and regions in connection with food security and the development of agricultural production for the full realization of the right to food. The Assembly noted the need to further examine various concepts such as, *inter alia*, "food sovereignty" and their relation with food security and the right to food, bearing in mind the need to avoid any negative impact on the enjoyment of the right to food for all people at all times, and stressed the need to make efforts to mobilize and optimize the allocation and utilization of technical and financial resources from all sources, including external debt relief for developing countries, and to reinforce national actions to implement sustainable food security policies. The Assembly further took note with appreciation of the interim report of the Special Rapporteur,[193] welcomed the continued cooperation of the High Commissioner, the Committee and the Special Rapporteur, and encouraged them to continue their cooperation in this regard.

(iii) *Right to education*

a. Human Rights Council

The Human Rights Council adopted resolution 8/4 entitled "The right to education" on 18 June 2008. In the resolution, the Council welcomed the reports of the Special Rapporteur on girls' right to education,[194] the right to education of persons with disabilities,[195] and on the right to education in emergency situations,[196] and the report of the Secretary-General on economic, social and cultural rights.[197] The Council urged States to give full effect to the right to education and to guarantee that this right would be recognized and exercised without discrimination of any kind, to take all appropriate measures to eliminate obstacles limiting effective access to education, notably by girls, including pregnant girls and young mothers, and *inter alia*, children belonging to minority groups, indigenous children, migrant children, refugee children, children affected by armed conflicts, children affected by natural disasters, children with disabilities, children affected by infectious diseases, including HIV/AIDS, and sexually exploited children. States were furthermore urged to promote the renewal and expansion of basic formal education of good quality, to

[193] A/63/278.

[194] E/CN.4/2006/45 and Add.1.

[195] A/HRC/4/29 and Add. 1, 2 and 3.

[196] A/HRC/8/10 and Add. 1-4.

[197] A/HRC/7/58.

recognize and promote lifelong learning for all, in both formal and informal settings and to support domestic literacy programmes, including vocational education components and non-formal education, in order to reach marginalized children, youth and adults, especially girls and women, and persons with disabilities, to ensure that they enjoy the right to education. The Council also urged all States to improve school infrastructure, to guarantee a safe school environment and to promote school health, education on reproductive health issues and preventive education against HIV/AIDS and drug abuse. States were urged to also adopt effective measures to encourage regular attendance at school and reduce school dropout rates and to adapt education, if necessary, in order to suit the specific needs of women, girls, teenagers and persons with disabilities.

b. General Assembly

On 18 December 2008, the General Assembly adopted resolution 63/154 entitled "United Nations Literacy Decade: education for all", in which it took note of the summary outcomes of the Regional Conferences in Support of Global Literacy, held in Azerbaijan, China, India, Mali, Mexico and Qatar in 2007 and 2008,[198] which indicated that the second half of the Decade should develop appropriate networks for greater regional collaboration. The Assembly called upon Member States to further reinforce political will, giving literacy higher priority within their educational planning and budgeting, and appealed to Governments to take full account of the use of languages in different contexts by promoting multilingual approaches to literacy, through which learners may acquire initial literacy in the language they know best. Governments were furthermore requested to strengthen national and subnational professional institutions in their countries and to foster greater collaboration among all literacy partners and to lend greater financial and material support to the efforts to increase literacy and achieve the goals of Education for All and those of the Decade. The United Nations Educational, Scientific and Cultural Organization was also requested to reinforce its coordinating and catalysing role in the fight against illiteracy and to develop, in cooperation with other international partners, in particular the specialized agencies and organizations of the United Nations system, a strategic framework for renewed cooperation and action.

(iv) *Right to adequate standard of living, including adequate housing and to be free of adverse effects of toxic waste*

Human Rights Council

On 12 March 2008, the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living presented his report to the Human Rights Council.[199]

[198] The summary outcomes of the Regional Conferences in Support of Global Literacy are available at http://www.unesco.org/education/en/literacy/conferences.

[199] A/HRC/7/16.

(v) *Access to safe drinking water and sanitation*

Human Rights Council

On 28 March 2008, the Human Rights Council adopted resolution 7/22 entitled "Human rights and access to safe drinking water and sanitation". In the resolution, the Council recalled the report of the United Nations High Commissioner for Human Rights on the scope and content of the relevant human rights obligations related to equitable access to safe drinking water and sanitation under international human rights instruments,[200] decided to appoint, for a period of three years, an independent expert on the issue of human rights obligations related to access to safe drinking water and sanitation, and called upon all Governments to cooperate with the independent expert. Governments were invited to share best practices with the independent expert and to provide him or her with all the necessary information related to the mandate to enable him or her to fulfil the mandate.

(vi) *Right to health*

a. Human Rights Council

On 11 March 2008, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health presented his report to the Human Rights Council.[201]

b. General Assembly

In 2008, the Special Rapporteur also presented a report to the General Assembly,[202] in which he highlighted the importance of effective, transparent, accessible and independent accountability mechanisms in relation to the right to the highest attainable standard of health, and in which he furthermore provided Human Rights Guidelines for Pharmaceutical Companies in relation to Access to Medicines, which set out the human rights responsibilities of pharmaceutical companies in this context.

On 26 November 2008, the General Assembly adopted, without a reference to a Main Committee, resolution 63/33 entitled "Global health and foreign policy", in which it recognized the close relationship between foreign policy and global health, and their interdependence. The Assembly further recognized that global challenges required concerted and sustained efforts by the international community, and urged Member States to consider health issues in the formulation of foreign policy. The Assembly recognized that the annual ministerial review to be held by the Economic and Social Council in 2009 would focus on the theme "Implementing the internationally agreed goals and commitments in regard to global public health", and in that regard called for enhanced coordination within the United Nations system.

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[200] A/HRC/6/3.

[201] A/HRC/7/11.

[202] A/63/263.

(*f*) Civil and political rights

(i) *Torture*

a. Human Rights Council

On 10 March 2008, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment presented his second report to the Human Rights Council.[203] The report aimed to respond to, and complement, initiatives in the area of gender mainstreaming and combating violence against women[204] to ensure that the torture protection framework was applied in a gender-inclusive manner with a view to strengthening the protection of women from torture. The Special Rapporteur suggested adding to the elements required to meet the threshold of torture[205] the criterion of powerlessness which would also allow the specific status of the victim to be taken into consideration, such as sex, age and physical and mental health,[206] and in some cases religion, which might render a specific person powerless in a given context. The Special Rapporteur furthermore concluded that torture and ill-treatment can occur in different private contexts, and pointed to the striking parallels between "official" and "private" torture in terms of strategies, process and resulting trauma, while showing that State acquiescence can occur at different levels. Therefore, he strongly recommended that torture and ill-treatment be understood in a gender-inclusive way and that States extend their prevention efforts to fully include torture and ill-treatment of women, even if it occurred in the "private" sphere.

b. General Assembly

On 18 December 2008, the General Assembly adopted, on the recommendation of the Third Committee, resolution 63/166, entitled "Torture and other cruel, inhuman or degrading treatment or punishment". In the resolution, the Assembly condemned all forms of torture and other cruel, inhuman or degrading treatment or punishment, including through intimidation, which were and shall remain prohibited at any time and in any place whatsoever and can thus never be justified. The Assembly 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 acts of torture must be made offences under domestic criminal law. The Assembly welcomed the establishment of national preventive mechanisms to prevent torture and encouraged all States that had not yet done so to establish such mechanisms. It further called upon States parties to the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment[207] to fulfil their obligation to designate or establish truly independent and effective national preventive mechanisms for the prevention of torture. Furthermore, the Assembly condemned any action or attempt by States or public officials to legalize, authorize or acquiesce in torture and other cruel, inhu-

[203] A/HRC/7/3.

[204] For further information, see report of the Special Rapporteur on violence against women, its causes and consequences (A/HRC/4/34, para. 56).

[205] Article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), lays down a definition, which sets out four elements required to meet the threshold of torture: severe pain and suffering, physical or mental; intent; purpose; state involvement.

[206] See European Court of Human Rights: Soering *v.* UK, 1989 and Costello *v.* UK, 1993.

[207] United Nations, *Treaty Series*, vol. 1465, p. 85.

man or degrading treatment or punishment under any circumstances, including on grounds of national security or through judicial decisions, and strongly urged States to ensure that no statement that was established to have been made as a result of torture was invoked as evidence in any proceedings. States were further urged to not to expel, return ("*refouler*"), extradite or in any other way transfer a person to another State where there were substantial grounds for believing that the person would be in danger of being subjected to torture, and recognized that diplomatic assurances, where used, did not release States from their obligations under international human rights, humanitarian and refugee law, and in particular under the principle of *non-refoulement*.

(vii) *Enforced disappearances*

a. Human Rights Council

On 27 March 2008, the Human Rights Council adopted two resolutions dealing with enforced disappearances. In its resolution 7/12, the Council took note of the report submitted by the Working Group on Enforced or Involuntary Disappearances,[208] and of the recommendations contained therein. The Council decided to extend the mandate of the Working Group for a further period of three years, and encouraged it in fulfilling its mandate to pay particular attention to cases of children subjected to enforced disappearance and children of disappeared persons, to cooperate closely with the Governments concerned in searching for and identifying these children, and to apply a gender perspective in its reporting process. In resolution 7/28 entitled "Missing persons", the Council called upon States that were parties to an armed conflict to take all appropriate measures to prevent persons from going missing in connection with armed conflict and account for persons reported missing as a result of such a situation, and reaffirmed the right of families to know the fate of their relatives reported missing in connection with armed conflicts.

b. General Assembly

On 18 December 2008, the General Assembly adopted, on the recommendation of the Third Committee, resolution 63/183 entitled "Missing persons". The Assembly welcomed the panel discussion on the question of missing persons held at the ninth session of the Human Rights Council, and invited relevant human rights mechanisms and procedures, as appropriate, to address the problem of persons reported missing in connection with armed conflicts in their forthcoming reports to the General Assembly.

(viii) *Freedom of opinion and expression*

Human Rights Council

At its seventh session, on 28 March 2008, the Human Rights Council adopted resolution 7/36 entitled "Mandate of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression". In the resolution, the Council took note with appreciation of the reports of the Special Rapporteur on the promotion and protection of the

[208] A/HRC/7/2.

right to freedom of opinion and expression,[209] and invited all relevant actors to consider the recommendations contained therein. The Council further decided to extend the mandate of the Special Rapporteur for a period of three years, and requested that he submit each year to the Council a report covering activities relating to his or her mandate.

(iv) *Freedom of religion or belief*

a. Human Rights Council

The Special Rapporteur on the freedom of religion or belief submitted her annual report to the Human Rights Council on the activities that she undertook in 2008.[210] She appended to her report a summary of communications that she had sent from 1 December 2006 to 30 November 2007 and the replies received from Governments by 30 January 2008.[211] She furthermore reported on her visits in 2007 to Tajikistan,[212] the United Kingdom of Great Britain and Northern Ireland[213] and Angola.[214]

On 27 March 2008, the Human Rights Council adopted resolution 7/19 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, and emphasized that equating any religion with terrorism should be rejected and combated by all at all levels.

The Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance submitted in 2008, pursuant to Human Rights Council resolution 7/19, a report on the manifestations of defamation of religions and in particular on the serious implications of islamophobia on the enjoyment of all rights.[215] The Special Rapporteur strongly recommended that the Human Rights Council encourage a shift away from the sociological concept of defamation of religions towards a legal norm of non-incitement to national, racial or religious hatred, on the basis of legal provisions laid down in international human rights instruments. He further recommended that the Human Rights Council invite Member States to promote the dialogue between cultures, civilizations and religions, taking into consideration, among other things, the need to accord equal treatment to combating defamation of religions in all its forms so as to avoid establishing any hierarchy in the different manifestations of discrimination, even if they might vary in nature and degree depending on historical, geographical and cultural contexts. Attention should also be attributed to the deep historical and cultural roots of all forms of defamation of religions and the corresponding need to combine legal measures with an intellectual, cultural and ethical approach that would take account of the processes, mechanisms and representations at the origin of these manifestations of discrimination over time.

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[209] E/CN.4/2006/55, A/HRC/4/27 and A/HRC/7/14.

[210] A/HRC/7/10.

[211] A/HRC/7/10/Add.1.

[212] A/HRC/7/10/Add.2.

[213] A/HRC/7/10/Add.3.

[214] A/HRC/7/10/Add.4.

[215] A/HCR/9/12.

b. General Assembly

The General Assembly adopted on 18 December 2008, on the recommendation of the Third Committee,[216] resolution 63/181 entitled "Elimination of all forms of intolerance and of discrimination based on religion or belief", in which it expressed concern over the persistence of institutionalized social intolerance and discrimination practised against many in the name of religion or belief. The Assembly recalled that legal procedures pertaining to religious or belief-based groups and places of worship were not a prerequisite for the exercise of the right to manifest one's religion or belief and such procedures at the national or local level, when legally required, should be non-discriminatory in order to contribute to the effective protection of the right of all persons to practise their religion or belief either individually or in community with others and in public or in private. The States were urged to step up their efforts to eliminate intolerance and discrimination based on religion or belief by, *inter alia*, ensuring that no one is discriminated against on the basis of his or her religion or belief when accessing, *inter alia*, education, medical care, employment, humanitarian assistance or social benefits; ensuring that no official documents are withheld from the individual on the grounds of religion or belief and that everyone has the right to refrain from disclosing information concerning one's religious affiliation on such documents. The Assembly emphasized that no religion should be equated with terrorism, as this may have adverse consequences on the enjoyment of the right to freedom of religion or belief of all members of the religious communities concerned. It furthermore welcomed the work and the interim report of the Special Rapporteur on freedom of religion or belief.[217]

On 18 December 2008, the General Assembly adopted, on the recommendation of the Third Committee,[218] resolution 63/171 entitled "Combating defamation of religions". In the resolution, the Assembly took note of the report of the Secretary-General[219] and the conclusions contained therein, and expressed its concerns at the negative stereotyping of religions and manifestations of intolerance and discrimination in matters of religion or belief still evident in the world. It noted the intensification of the overall campaign of defamation of religions, and incitement to religious hatred in general, including the ethnic and religious profiling of Muslim minorities in the aftermath of the tragic events of 11 September 2001. States were invited by the Assembly to put into practice the provisions of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief,[220] and were urged, inter alia, 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 take all possible measures to promote tolerance and respect for all religions and beliefs as well as the understanding of their value systems. The Assembly further urged all States to ensure that all public officials, including members of law enforcement bodies, the military, civil servants and educators, in the course of their official duties, respect people regardless of their different religions and beliefs. In the same resolution the General Assembly welcomed the initiative by the United Nations High Commissioner for Human Rights on the recently held expert semi-

[216] A/62/439/Add.2.

[217] See A/62/280 and Corr.1.

[218] A/63/430/Add.2.

[219] A/63/365.

[220] General Assembly resolution 36/55 of 25 November 1981.

nar on freedom of expression and advocacy of religious hatred that constitutes incitement to discrimination, hostility or violence, on 2 and 3 October 2008.

The Special Rapporteur on the freedom of religion or belief also presented an interim report to the General Assembly at its sixty-third session,[221] in which she addressed citizenship issues and religious discrimination in administrative procedures. She noted that while most States did not openly discriminate on the basis of religion with respect to citizenship issues and in administrative procedures, there were instances where State practice or domestic legislation was inconsistent with human rights standards. The Rapporteur expressed particular concerns about the denial or deprivation of citizenship based on, *inter alia*, a person's religious affiliation; requirements to denounce a particular faith when applying for official documents; and restricted eligibility for State functions for persons of certain faiths. Therefore, she emphasized that the legitimate interests of the State had to be balanced on a case-by-case basis with the individual's freedom of religion or belief, also taking into account his or her right to privacy, liberty of movement, right to nationality,[222] and the principle of non-discrimination.

(v) *Administration of justice; arbitrary detention and extrajudicial, summary and arbitrary execution*

a. Human Rights Council

At its eighth session, on 8 June 2008, the Human Rights Committee adopted resolution 8/3 entitled "Mandate of the Special Rapporteur on extrajudicial, summary or arbitrary executions". In the resolution, the Council strongly condemned once again all extrajudicial, summary or arbitrary executions, in all their forms, that continue to take place throughout the world, and acknowledged the importance of relevant special procedures of the Council in their key role as early warning mechanisms in preventing the crime of genocide, crimes against humanity and war crimes, and encouraged the relevant special procedures, within their mandates, to cooperate towards this end. The Council took note of the report of the Special Rapporteur on extrajudicial, summary or arbitrary executions,[223] and decided to extend the mandate of the Special Rapporteur for a period of three years.

On the same date, the Human Rights Council adopted resolution 8/6 entitled "Mandate of the Special Rapporteur on the independence of judges and lawyers", in which it commended the Special Rapporteur on the independence of judges and lawyers for the important work undertaken in the discharge of his mandate, and decided to extend his mandate for a period of three years.

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[221] A/63/161.

[222] The Human Right Council also adopted, on 27 March 2008, resolution 7/10 entitled "Human rights and arbitrary deprivation of nationality" in which it reaffirmed that the right to a nationality of every human person is a fundamental human right and recognized that arbitrary deprivation of nationality on racial, national, ethnic, religious, political or gender grounds is a violation of human rights and fundamental freedoms.

[223] A/HRC/8/3.

b. General Assembly

On 18 December 2008, the General Assembly adopted resolution 63/182 entitled "Extrajudicial, summary or arbitrary executions". In the resolution, the Assembly called upon all States, in order to prevent extrajudicial, summary and arbitrary executions, to comply with their obligations under relevant provisions of international human rights instruments. In the same vein, the Assembly affirmed the obligation of States to protect the lives of all persons deprived of their liberty in all circumstances and to investigate and respond to deaths in custody. The Assembly welcomed the International Criminal Court as an important contribution to ending impunity concerning extrajudicial, summary or arbitrary executions, and acknowledged the importance of ensuring the protection of witnesses for the prosecution of those suspected of extrajudicial, summary or arbitrary executions. It further noted with appreciation the report of the Special Rapporteur to the General Assembly.[224]

(vi) *Integration of human rights of women and gender perspective*[225]

Human Rights Council

On 28 March 2008, the Human Rights Council adopted resolution 7/24 entitled "Elimination of violence against women" in which it strongly condemned all acts of violence against women and girls, whether these acts were perpetrated by the State, private persons or non-State actors, and called for the elimination of all forms of gender-based violence in the family, within the general community and where perpetrated or condoned by the State. The Council took note of the latest report of the Special Rapporteur,[226] which included efforts to formulate indicators on violence against women, as well as her previous reports on intersections between culture and violence against women[227] and on the due diligence standard as a tool for elimination of violence against women.[228] The Council further welcomed the launch of the campaign of the Secretary-General in February 2008 to end violence against women, as well as the work of the Special Rapporteur on violence against women, its causes and consequences. The Council decided to extend the mandate of the Special Rapporteur for a period of three years and invited her to carry out her mandate by, *inter alia*, recommending measures, ways and means, at the local, national, regional and international levels, that would eliminate all forms of violence against women and its causes, and would remedy its consequences, and by continuing to adopt a comprehensive and universal approach to the elimination of violence against women, its causes and consequences, including causes of violence against women related to the civil, cultural, economic, political and social spheres.

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[224] A/63/313.

[225] See also section 6 of this chapter.

[226] A/HRC/7/6.

[227] A/HRC/4/34.

[228] E/CN.4/2006/61.

(vii) *Trafficking*

a. Human Rights Council

At its eighth session, on 18 June 2008, the Human Rights Council adopted resolution 8/12 entitled "Special Rapporteur on trafficking in persons, especially women and children". The Council expressed concern at, *inter alia*, the high number of persons, especially women and children, in particular from developing countries and countries with economies in transition, who were being trafficked to developed countries, as well as within and between regions and States, and the increasing activities of transnational and national organized crime and others that profit from trafficking in persons without regard for dangerous and inhumane conditions and in flagrant violation of domestic laws and international standards. Governments were urged to, *inter alia*, take appropriate measures to address the root factors, including external factors, that encourage trafficking in persons for prostitution and other forms of commercialized sex, forced marriages and forced labour, slavery or practices similar to slavery, servitude or for the removal of organs; to criminalize trafficking in persons in all its forms and to condemn and penalize traffickers, facilitators and intermediaries; and to ensure protection and assistance to the victims of trafficking with full respect for their human rights. The Council took note of the work undertaken by the Special Rapporteur on trafficking in persons, especially women and children, and decided to extend the mandate of the Special Rapporteur on trafficking in persons, especially women and children, for a period of three years.

b. General Assembly

On 18 December 2008, the General Assembly adopted, on the recommendation of the Third Committee, resolution 63/194 entitled "Improving the coordination of efforts against trafficking in persons". In the resolution, the Assembly urged Member States that had not yet done so to consider taking measures to ratify or accede to the United Nations Convention against Transnational Organized Crime[229] and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children,[230] and to implement fully all aspects of those instruments. The General Assembly encouraged all stakeholders, including the private sector, to strengthen the coordination of efforts, including through the Inter-Agency Coordination Group against Trafficking in Persons and regional as well as bilateral initiatives that promote cooperation and collaboration, and welcomed the holding of the Vienna Forum to Fight Human Trafficking, from 13 to 15 February 2008, as a part of the awareness-raising efforts to fight human trafficking. Furthermore, Member States were invited to accelerate the consideration of the advisability of a global plan of action on preventing trafficking in persons, prosecuting traffickers and protecting and assisting victims of trafficking, which would achieve the full and effective coordination of efforts against trafficking in persons.

On the same day, the General Assembly adopted, on the recommendation of the Third Committee, resolution 63/156 entitled "Trafficking in women and girls". The Assembly welcomed the efforts of Governments, United Nations bodies and agencies and intergovernmental and non-governmental organizations to address the particular problem of

[229] General Assembly resolution 55/25 of 15 November 2000, annex I.

[230] General Assembly resolution 55/25 of 15 November 2000, annex II.

trafficking in women and girls, and encourages them to enhance their efforts and cooperation, including by sharing their knowledge, technical expertise and best practices as widely as possible, and called upon Governments to discourage, with a view to eliminating, the demand that fosters the trafficking of women and girls for all forms of exploitation, and in this regard to enhance preventive measures, including legislative measures, to deter exploiters of trafficked persons, as well as ensure their accountability. The Assembly further called upon Governments, the international community and all other organizations and entities that deal with conflict and post-conflict, disaster and other emergency situations to address the heightened vulnerability of women and girls to trafficking and exploitation, and associated gender-based violence, and called upon all Governments to criminalize all forms of trafficking in persons, recognizing its increasing occurrence for purposes of sexual exploitation, commercial sexual exploitation and abuse, sex tourism and forced labour, and to bring to justice and punish the offenders and intermediaries involved, whether local or foreign, through the competent national authorities.

(*g*) Rights of the child

(i) *Human Rights Council*

On 27 March 2008, the Human Rights Council adopted resolution 7/13 entitled "Mandate of the Special Rapporteur on the sale of children, child prostitution and child pornography". The Council welcomed the work and contributions of the Special Rapporteur on the sale of children, child prostitution and child pornography, and decided to extent the mandate of the Special Rapporteur for three years.

On 28 March 2008, the Human Rights Council adopted resolution 7/29 entitled "Rights of the Child". In the resolution, the Council reaffirmed 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, acknowledged that the Convention on the Rights of the Child[231] was the most universally ratified human rights treaty, and urged the States that had not yet done so to become parties to the Convention and the Optional Protocols thereto as a matter of priority. It further affirmed its commitment to effectively integrate the rights of the child in its work and that of its mechanisms in a regular, systematic and transparent manner, taking into account specific needs of boys and girls, and urged all stakeholders to take into full account the rights of the child in the universal periodic review. The Council, deeply concerned by the horrific scale and impact of all forms of violence against children, in all regions, in their homes and families, in schools, care and justice systems, workplaces and in communities, urged States to take effective and appropriate legislative and other measures to prohibit and eliminate all forms of violence against children, and to take appropriate measures to assert the right of children to respect for their human dignity and physical integrity and to prohibit and eliminate any emotional or physical violence or any other humiliating or degrading treatment. The Council called upon States to take all necessary measures, including legal reforms where appropriate and to ensure the full and equal enjoyment by girls of all human rights and fundamental freedoms, to take effective actions

[231] United Nations, *Treaty Series*, vol. 1577, p. 3.

against violations of those rights and freedoms, to end impunity and to base programmes and policies on the rights of the child, taking into account the special situation of girls. The Council also recognized that children with disabilities should have full enjoyment of all human rights and fundamental freedoms on an equal basis with other children.

With regard to children alleged to have or recognized as having infringed penal law, the Council called upon States, in particular those States in which the death penalty had not been abolished, to comply with their obligations as assumed under relevant provisions of international human rights instruments and to give greater consideration to restorative justice practices, including mediation, as an alternative to sentencing, or as part of the sentencing process with regard to offenders under the age of 18.

In the same resolution, the Human Rights Council strongly condemned any recruitment and use of children in armed conflicts contrary to international law, urged all parties to an armed conflict to end such practice, and all other violations and abuses committed against children, and noted with appreciation the steps taken regarding Security Council resolution 1612 (2005) of 26 July 2005 and the efforts of the Secretary-General to implement the monitoring and reporting mechanism, including in collecting and providing timely, objective, accurate and reliable information on children and armed conflict.

Finally, the Council requested the Secretary-General to submit to the Council at its tenth session a report on the rights of the child, and the Special Rapporteur on the sale of children, child prostitution and child pornography to submit a report to the Council according to its programme of work.

(ii) *General Assembly*

Resolution 63/241 entitled "Rights of the child", was adopted by the General Assembly, on the recommendation of the Third Committee, on 24 December 2008. In the resolution, 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. The Assembly welcomed the work of the Special Rapporteur on the right to education and took note of his report on the right to education in emergency situations. It further recognized that the right to education was to be respected at all times, and therefore called upon Member States to adopt legal and other measures to ensure that education was included in emergency preparedness plans. Member States were urged to implement strategies for the realization of the right to education as an integral element in the context of humanitarian assistance.

In the same resolution, the Assembly expressed grave concern at the worsening of the world food crisis, which seriously undermined the realization of the right to food for all, including mothers and children, and also expressed grave concern that this crisis threatened to further undermine the achievement of the Millennium Development Goals. As a consequence, States were invited to take immediate steps to eliminate child hunger, including through the adoption or strengthening of national programmes to address food security and adequate livelihoods, as well as nutritional security. Furthermore, the Assembly called upon States to give attention to the impact of parental detention and imprisonment of children and to give priority consideration to non-custodial measures when sentencing

or deciding on pre-trial measures for a child's sole or primary caretaker, subject to the need to protect the public and the child, and bearing in mind the gravity of the offence.

Concerned by children affected by armed conflicts, the Assembly called upon States to ensure timely and adequate funding for national disarmament, demobilization and reintegration programmes for children and for settlement, rehabilitation and reintegration efforts for all children associated with armed forces and groups, including detained children. The Assembly furthermore recognized that child labour contributed to the perpetuation of poverty and remained a central obstacle to realizing the right of all children to education and to protection from violence, abuse and exploitation, and therefore called upon all States to translate into concrete action their commitment to the progressive and effective elimination of child labour.

(*h*) Migrants

(i) *Human Rights Council*

On 24 September 2008, the Human Rights Council adopted resolution 9/5 entitled "Human rights of migrants", in which the Council encouraged States to consider the possibility of adopting immigration programmes, as adopted by some countries, that allowed migrants to integrate fully into the host countries, facilitated family reunification and promoted a harmonious and tolerant environment. States were further encouraged to apply a gender perspective in developing international migration policies and programmes in order to adopt the necessary measures to better protect women and girls against dangers and abuse during migration. Due attention should also be attributed to protecting the human rights of migrant children, given their vulnerability, particularly unaccompanied migrant children, and therefore States were called upon to ensure that the best interests of the children are a primary consideration in their policies of integration, return and family reunification and to eliminate discriminatory policies that deny migrant children access to education. The Council welcomed the adoption by the World Health Organization of its resolution WHA61.17 on the health of migrants.

(ii) *General Assembly*

On 18 December 2008, the General Assembly adopted, on the recommendation of the Third Committee, resolution 62/184 entitled "Protection of migrants". In the resolution, the Assembly called upon States to put an end to arbitrary arrest and detention and to review detention periods in order to avoid excessive detention of irregular migrants, and in the same vein, to adopt alternative measures to detention. States were requested 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 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 allowed for the identification and special protection of persons in vulnerable situations, and took into account the principle of the best interest of the child and family reunifica-

tion. Furthermore, the Assembly underlined the right of migrants to return to their country of citizenship, recalling at the same time that States must ensure that their returning nationals were duly received.

On the same date, the General Assembly adopted resolution 63/188 entitled "Respect for the right to universal freedom of travel and the vital importance of family reunification", in which the General Assembly stressed how family reunification of documented migrants was an important factor in international migration and how remittances by documented migrants to their countries of origin were instrumental in improving the well-being of relatives left behind. The Assembly noted that in certain cases it had been reported that measures had been adopted that increased the restrictions imposed on documented migrants in relation to family reunification and the possibility of sending remittances to their relatives in the country of origin. Therefore, the Assembly called upon all States to guarantee the universally recognized freedom of travel to all foreign nationals legally residing in their territory and reaffirmed that all Governments, in particular those of receiving countries, must recognize the vital importance of family reunification and promote its incorporation into national legislation in order to ensure protection of the unity of families of documented migrants.

(*i*) Internally displaced persons

Human Rights Council

On 2 June 2008, at the eighth session of the Human Rights Council, the Representative of the Secretary-General on human rights of internally displaced persons presented his report to the Council.[232]

(*j*) Minorities

Human Rights Council

On 27 March 2008, the Human Rights Council adopted resolution 7/6 entitled "Mandate of the independent expert on minority issues". The Council commended the independent expert on minority issues for the work that she had undertaken so far, for the important role that she had played in raising the level of awareness of, and in giving added visibility to, the rights of persons belonging to national or ethnic, religious and linguistic minorities, and for her ongoing efforts to promote and protect their rights in order to ensure equitable development and peaceful and stable societies. The Council further decided to extend the mandate of the Independent Expert for a period of three years.

(*k*) Indigenous issues

(i) *Human rights Council*

During its ninth session, on 18 September 2008, the Human Rights Council adopted resolution 9/7 entitled "Human rights and indigenous people". The Council welcomed

[232] A/HRC/8/6.

the report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people,[233] and the report of the United Nations High Commissioner for Human Rights on indigenous issues.[234] The Council requested the expert mechanism on the rights of indigenous peoples to identify proposals and to suggest them by consensus to the Council, for its consideration in 2009, and to prepare a study, to be concluded in 2009, on lessons learned and challenges to achieve the implementation of the right of indigenous peoples to education.

(ii) *General Assembly*

On 18 December 2008, the General Assembly adopted resolution 63/160 entitled "Indigenous issues", in which it decided to adjust the mandate of the United Nations Voluntary Fund for Indigenous Populations so as to facilitate the participation of representatives of indigenous peoples' organizations in the expert mechanism established in accordance with Human Rights Council resolution 6/36 of 14 December 2007.

(*l*) Terrorism and human rights

(i) *Human rights Council*

On 27 March 2008, the Human Rights Council adopted resolution 7/7 entitled "Protection of human rights and fundamental freedoms while countering terrorism". In the resolution, the Council reaffirmed that States must ensure that any measure taken to combat terrorism complies with their obligations under international law, in particular international human rights, refugee and humanitarian law. It reaffirmed its unequivocal condemnation of all acts, methods and practices of terrorism in all its forms and manifestations, wherever and by whomsoever committed, regardless of their motivation, as criminal and unjustifiable. The Council further reaffirmed the obligation of States, in accordance with article 4 of the International Covenant on Civil and Political Rights,[235] to respect that certain rights are non-derogable in all circumstances. The Council acknowledged with appreciation the reports of the Special Rapporteur on the promotion and protection of human rights while countering terrorism submitted to the Council,[236] and the reports of the High Commissioner for Human Rights on the protection of human rights and fundamental freedoms while countering terrorism submitted to the Council,[237] as well as the work to implement the mandate given to her by the Commission on Human Rights in its resolution 2005/80 and the General Assembly in its resolution 60/158.

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[233] A/HRC/9/9.

[234] A/HRC/9/11.

[235] United Nations, *Treaty Series*, vol. 999, p. 171.

[236] A/HRC/6/17 and Corr.1, A/HRC/4/26 and E/CN.4/2006/98.

[237] E/CN.4/2006/94 and A/HRC/4/88.

(ii) *General Assembly*

In its resolution 63/185, entitled "Protection of human rights and fundamental freedoms while countering terrorism", adopted on 18 December 2008 on the recommendation of the Third Committee, the General Assembly 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. The Assembly furthermore called upon States not to resort to profiling based on stereotypes founded on grounds of discrimination prohibited by international law, including discrimination on racial, ethnic and/or religious grounds.

(*m*) Promotion and protection of human rights

(i) *International cooperation*

a. Human Rights Council

On 27 March 2008, the Human Rights Council adopted resolution 7/3 entitled "Enhancement of international cooperation in the field of human rights". The Council reaffirmed that it was one of the purposes of the United Nations and the responsibility of all Member States to promote, protect and encourage respect for human rights and fundamental freedoms through, *inter alia*, international cooperation, and recognized that, in addition to their separate responsibilities to their individual societies, States have a collective responsibility to uphold the principles of human dignity, equality and equity at the global level. The Council considered that that international cooperation in the field of human rights, in conformity with the purposes and principles set out in the Charter of the United Nations and international law, should make an effective and practical contribution to the urgent task of preventing violations of human rights and fundamental freedoms. It further called upon Member States, specialized agencies and intergovernmental organizations to continue to carry out a constructive dialogue and consultations for the enhancement of understanding and the promotion and protection of all human rights and fundamental freedoms, and encouraged non-governmental organizations to contribute actively to this endeavour. The Council took note of the report of the United Nations High Commissioner for Human Rights on the enhancement of international cooperation in the field of human rights.[238]

b. General Assembly

On 18 December 2008, the General Assembly adopted, on the recommendation of the Third Committee, resolution 63/180 entitled "Enhancement of international coopera-

[238] A/HRC/7/31.

tion in the field of human rights", in which it reaffirmed that it was one of the purposes of the United Nations and the responsibility of all Member States to promote, protect and encourage respect for human rights and fundamental freedoms through, *inter alia*, international cooperation. In the same resolution, the Assembly called upon Member States, the specialized agencies and intergovernmental organizations to continue to carry out a constructive dialogue and consultations for the enhancement of understanding and the promotion and protection of all human rights and fundamental freedoms.

(ii) *The role of the Ombudsman, mediator and other national human rights institutions in the promotion and protection of human rights*

General Assembly

On 18 December 2008, the General Assembly adopted, on the recommendation of the Third Committee, resolution 63/169 entitled "The role of the Ombudsman, mediator and other national human rights institutions in the promotion and protection of human rights", in which it recognized the role of the existing Ombudsman, whether male or female, mediator and other national human rights institutions in the promotion and protection of human rights and fundamental freedoms, and in contributing to the effective realization of the rule of law and respect for the principles of justice and equality. Member States were therefore encouraged, *inter alia*, to consider the creation or the strengthening of independent and autonomous Ombudsman, mediator and other national human rights institutions and to give serious consideration to implementing the recommendations and proposals of such institutions, with the aim of addressing claims of the complainants, in accordance with the principles of justice, equality and the rule of law.

On the same date, the General Assembly adopted resolution 63/172 entitled "National institutions for the promotion and protection of human rights", in which it took note with appreciation of the reports of the Secretary-General on national institutions for the promotion and protection of human rights,[239] and encouraged Member States to establish effective, independent and pluralistic national institutions or to strengthen them for the promotion and protection of human rights. The Assembly recognized the role played by national institutions for the promotion and protection of human rights in the Human Rights Council, including its universal periodic review mechanism and the special procedures, and in the same vein urged the Secretary-General to continue to give high priority to requests from Member States for assistance in the establishment and strengthening of national human rights institutions. The Assembly furthermore welcomed the national institutions website as an important vehicle for the delivery of information to national institutions and also the launch of a database of comparative analysis of procedures and methods of complaint-handling by national human rights institutions.

[239] A/HRC/7/69 and A/63/486.

(iii) *The right to the truth*

Human Rights Council

On 24 September 2008, the Human Rights Council adopted resolution 9/11 entitled "Right to the truth". The Council recognized the importance of respecting and ensuring the right to the truth so as to contribute to ending impunity and to promote and protect human rights, and welcomed the establishment in several States of specific judicial mechanisms and other non-judicial mechanisms such as truth and reconciliation commissions, that complement the justice system, to investigate violations of human rights and violations of international humanitarian law. In this regard, the Council encouraged the States concerned to disseminate, implement and monitor implementation of the recommendations of non-judicial mechanisms such as truth and reconciliation commissions. Other States were also encouraged to consider establishing specific judicial mechanisms and truth and reconciliation commissions to complement the justice system, to investigate and address gross violations of human rights and serious violations of international humanitarian law. In the same resolution, the Office of the United Nations High Commissioner for Human Rights was requested to prepare a comprehensive study, to be presented to the Council at its twelfth session, on best practices for the effective implementation of this right, including, in particular, practices relating to archives and records concerning gross violations of human rights with a view to creating guidelines on protecting archives and records concerning gross human rights violations, and programmes for the protection of witnesses and other persons involved in trials connected with such violations.

(*n*) Persons with disabilities

(i) *Human Rights Council*

On 27 March 2008, the Human Rights Council adopted resolution 7/9, entitled "Human rights of persons with disabilities", in which it recognized that disability was an evolving concept and that disability resulted from the interaction between persons with impairments and attitudinal and environmental barriers that hinder their full and effective participation in society on an equal basis with others. It also acknowledged the importance of accessibility to the physical, social, economic and cultural environment, to health, education, information and communication, in enabling persons with disabilities to enjoy all human rights and fundamental freedoms fully. Furthermore, as women and girls with disabilities were often subject to multiple discriminations, the Council emphasized the need to incorporate a gender perspective in all efforts to promote the full enjoyment of human rights and fundamental freedoms by persons with disabilities.

(ii) *General Assembly*

On 18 December 2008, the General Assembly adopted, on the recommendation of the Third Committee, resolution 63/192 entitled "Convention on the Rights of Persons with Disabilities and the Optional Protocol thereto", in which it welcomed the entry into force of the

Convention on the Rights of Persons with Disabilities[240] and the Protocol thereto.[241] The Assembly further welcomed the holding of the first session of the Conference of States Parties to the Convention on 31 October and 3 November 2008, the establishment of the Committee on the Rights of Persons with Disabilities, and the report of the Secretary-General.[242]

On the same day, the General Assembly adopted, also on the recommendation of the Third Committee, resolution 63/150 entitled "Realizing the Millennium Development Goals for persons with disabilities through the implementation of the World Programme of Action concerning Disabled Persons and the Convention on the Rights of Persons with Disabilities". The Assembly welcomed the report of the Secretary-General on the fifth quinquennial review and appraisal of the World Programme of Action concerning Disabled Persons,[243] and his report on the status of the Convention on the Rights of Persons with Disabilities and the Optional Protocol thereto.[244] The Assembly expressed concern about the persistent gap between policy and practice regarding mainstreaming the perspective of persons with disabilities in the work of the United Nations in realizing the Millennium Development Goals, and urged States to involve persons with disabilities on an equal basis with other persons in the formulation of strategies and plans, in particular those of most relevance to them. States were further encouraged to collect and analyse appropriate information, including statistical and research data that were disaggregated by age and sex, on the situation of persons with disabilities, bearing in mind appropriate protection of personal data, for purposes of policy planning, analysis and evaluation that included the perspective of persons with disabilities. States were invited to consider including in country reports in connection with the forthcoming periodic reviews of progress in achieving the Millennium Development Goals a review and evaluation of the impact of development efforts on the rights, well-being and livelihood of persons with disabilities.

(*o*) Contemporary forms of slavery

Human Rights Council

In its resolution 6/14 of 28 September 2007, the Human Rights Council appointed Ms. Gulnara Shahinian for a three-year period as Special Rapporteur on contemporary forms of slavery, including its causes and consequences. Under this new mandate, replacing the Working Group on Contemporary Forms of Slavery, the Special Rapporteur submitted her first report in 2008.[245]

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[240] 61/106, annex I.

[241] *Ibid*., annex II.

[242] A/63/264 and Corr.1.

[243] A/63/183.

[244] A/63/264 and Corr.1.

[245] A/HRC/9/20.

(*p*) 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

On 27 March 2008, the Human Rights Council adopted resolution 7/4 entitled "Mandate of the independent expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights". The Council took into account the report[246] presented by the outgoing holder of the mandate of the independent expert on the effects of economic reform policies and foreign debt on the full enjoyment of all human rights. The Council decided to redefine the mandate of the special thematic procedure and rename it "independent expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights", and to extend the mandate for a period of three years. The independent expert was requested to explore further, in his or her analytical annual report to the Human Rights Council, the interlinkages with trade and other issues, including HIV/AIDS, when examining the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights and to contribute, as appropriate, to the process entrusted with the follow-up to the International Conference on Financing for Development, with a view to bringing to its attention the broad scope of his or her mandate.

(ii) *Human rights and unilateral coercive measures*

On 18 December 2008, the General Assembly adopted, on the recommendation of the Third Committee, resolution 63/179 entitled "Human rights and unilateral coercive measures". Similarly to the Human Rights Council,[247] the Assembly urged all States not to adopt any unilateral measures that impeded the full achievement of economic and social development by the population of the affected countries, in particular children and women, that hindered their well-being and that created 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, and to ensure that food and medicine were not used as tools for political pressure. The Assembly strongly objected to the extraterritorial nature of such measures which, in addition, threatened 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.

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[246] A/HRC/7/9.

[247] On 24 September 2008, the Human Rights Council adopted its resolution 9/4 entitled "Human Rights and unilateral coercive measures".

(iii) *Human rights and climate change*

The Human Rights Council adopted, on 28 March 2008, resolution 7/23 entitled "Human rights and climate change", in which it expressed its concern that climate change posed an immediate and far-reaching threat to people and communities around the world and had implications for the full enjoyment of human rights. The Council recognized that climate change was a global problem and that it required a global solution, and stated that the United Nations Framework Convention on Climate Change remained the comprehensive global framework to deal with climate change issues. Also recognizing that human beings were at the centre of concerns for sustainable development and that the right to development must be fulfilled so as to equitably meet the development and environmental needs of present and future generations, the Council noted that the world's poor were especially vulnerable to the effects of climate change, in particular those concentrated in high-risk areas, and that they tended to have more limited adaptation capacities. The Council decided in the same resolution to request the Office of the United Nations High Commissioner for Human Rights, in consultation with and taking into account the views of States and other relevant actors and stakeholders, to conduct, within existing resources, a detailed analytical study on the relationship between climate change and human rights, to be submitted to the Council.

6. Women[248,249]

(*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 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-second session from 25 February to 7 March and 13 March 2008 in New York. In 2008, the Commission was mandated, in the multi-year programme of work adopted by the Economic and Social Council in its resolution 2006/9, to consider as its priority the theme "Financing for gender equality and the empowerment of women".[250]

During its fifty-second session, the Commission adopted a number of resolutions[251] to be brought to the attention of the Economic and Social Council dealing with, *inter alia*, the release of women and children taken hostage, including those subsequently imprisoned, in

[248] See also the Human rights section of the present chapter.

[249] For a complete list of signatories and States parties to international instruments relating to women that are deposited with the Secretary-General, see the chapters relating to human rights and the status of women, in *Multilateral Treaties Deposited with the Secretary-General,* available at www. treaties. un.org/Pages/ParticipationStatus.aspx.

[250] For the report of the Commission on the status of Women on its fifty-second session, see *Official Records of the Economic and Social Council, 2008 Supplement No. 7*, E/2008/27-E/CN.6/2008/11.

[251] Resolutions 52/1, 52/2, 52/3, 52/4, 52/101, and 52/102.

armed conflicts; ending female genital mutilation; the strengthening of the International Research and Training Institute for the Advancement of Women; women, the girl child and HIV/AIDS; and the future work of the Working Group on Communications.

In its resolution 52/1, entitled "Release of women and children taken hostage, including those subsequently imprisoned, in armed conflicts", the Commission, *inter alia*, strongly urged all parties to armed conflicts to respect fully the norms of international humanitarian law and to take all necessary measures for the protection of the civilian population including measures to prevent and combat acts of hostage-taking, and to release immediately all women and children who have been taken hostage. The Commission stressed both the need to put an end to impunity and the responsibility of all States to prosecute or bring to justice in accordance with international law those responsible for war crimes, including hostage-taking, and requested the Secretary-General and all relevant international organizations to use their capabilities and undertake efforts to facilitate the immediate release of civilian women and children who have been taken hostage.

In its resolution 52/2, entitled "Ending female genital mutilation", the Commission welcomed the report of the Secretary-General on ending female genital mutilation and the recommendations contained therein.[252] It also welcomed the in-depth study of the Secretary-General on all forms of violence against women[253] and took note of the report of the independent expert for the United Nations study on violence against children.[254] The Commission welcomed the adoption of the call for accelerated action on the implementation of the Plan of Action towards Africa Fit for Children (2008-2012),[255] and urged States to provide education and training on the rights of girls to families, community leaders and members of all professions relevant to the protection and empowerment of girls. Furthermore, States were urged to review, revise, amend or abolish all laws, regulations, policies, practices and customs, in particular female genital mutilation, and were called upon to develop policies, protocols and rules to ensure the effective implementation of national legislative frameworks on eliminating discrimination and violence against girls.

(*b*) General Assembly

On 18 December 2008, the General Assembly adopted, on the recommendation of the Third Committee, a number of resolutions dealing with the rights of women, which are highlighted below.

In its resolution 63/155, entitled "Intensification of efforts to eliminate all forms of violence against women", the General Assembly, inter alia, took note with appreciation of the report of the Secretary-General on the intensification of efforts to eliminate all forms of violence against women,[256] as well as the report of the Secretary-General on eliminating rape and other forms of sexual violence in all their manifestations, including in conflict and

[252] E/CN.6/2008/3.

[253] A/61/122 and Add.1, and Add.1/Corr.1.

[254] See A/62/209.

[255] A/62/653, annex.

[256] A/63/214 and Corr.1.

related situations.[257] The second thematic report on violence against women, its causes and consequences, submitted by the Special Rapporteur to the Human Rights Council in 2008 was also welcomed by the Assembly.[258] In addition, the Assembly urged States to continue to develop their national strategy and a more systematic, comprehensive, multisectoral and sustained approach aimed at eliminating all forms of violence against women, including by achieving gender equality and the empowerment of women, and by using best practices to end impunity and a culture of tolerance towards violence against women, inter alia, in the fields of legislation, prevention, law enforcement, victim assistance and rehabilitation. The Secretary-General was requested to submit to the General Assembly, at its sixty-fourth session, a report with information provided by the United Nations bodies, funds and programmes and the specialized agencies on their follow-up activities to implement the General Assembly resolutions 61/143 and 62/133, and the present resolution, including on their assistance to States in their efforts to eliminate all forms of violence against women. The Secretary-General was further requested to submit to the General Assembly at its sixty-fifth session a report with information provided by States on their follow-up activities to implement the present resolution.

On 18 December 2008, the General Assembly adopted, on the recommendation of the Third Committee, resolution 63/157, entitled "Future operation of the International Research and Training Institute for the Advancement of Women". In the resolution, the Assembly requested the International Research and Training Institute for the Advancement of Women to, inter alia, coordinate further its activities; to develop its programme of work in collaboration with other relevant United Nations entities; and to collaborate with the United Nations system, national machinery, non-governmental organizations and the private sector in promoting international cooperation to foster the empowerment of women and gender equality. The Institute was invited to continue, in close cooperation with other relevant United Nations bodies, to promote and undertake research and training programmes on gender mainstreaming, in the context of the Millennium Development Goals, the implementation of the Convention on the Elimination of All Forms of Discrimination against Women[259] and the Beijing Declaration and Platform for Action,[260] as well as the commitments made at the twenty-third special session of the General Assembly.[261] The Assembly requested the Institute to continue to assist countries in promoting and supporting the political participation and economic and social advancement of women through training programmes.

In its resolution 63/159, 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 General Assembly, *inter alia*, took note with appreciation of the report of the Secretary-General on this item[262] and recognized that the implementation of the Beijing Declaration and Platform for Action and

[257] A/63/216 and Corr.1.

[258] A/HRC/7/6.

[259] United Nations, *Treaty Series*, vol. 1249, No 20378.

[260] Report of the Fourth World Conference on Women, Beijing, 4–15 September 1995 (United Nations publication, Sales No. E.96.IV.13), chap. I, resolution 1, annexes I and II.

[261] Resolution S-23/3, annex.

[262] A/63/217.

the fulfilment of the obligations under the Convention on the Elimination of All Forms of Discrimination against Women[263] were mutually reinforcing in achieving gender equality and the empowerment of women. The Assembly reaffirmed that States had an obligation to exercise due diligence to prevent violence against women and girls, to provide protection to the victims and investigate, to 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. Furthermore, the Assembly welcomed the work of the Commission on the Status of Women in reviewing the implementation of the Beijing Declaration and Platform for Action, and noted with appreciation the agreed conclusions on financing for gender equality and the empowerment of women, adopted by the Commission at its fifty-second session.[264] The Assembly called upon Governments, in this regard, to promote awareness and information campaigns on women's rights and the responsibility to respect them, including in rural areas, and to encourage men and boys to speak out strongly against violence against women.

7. Humanitarian matters

(*a*) Economic and Social Council

On 25 July 2008, the Economic and Social Council adopted resolution 2008/36 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.[265] It also welcomed the decision to consider the theme "Building capabilities and capacities at all levels for timely humanitarian assistance, including disaster risk reduction" at the humanitarian affairs segment of the substantive session the General Assembly in 2008. The Council furthermore took note of the section on the use of foreign military assets in disaster relief contained in the report of the Secretary-General on this item,[266] and emphasized at the same time the fundamentally civilian character of humanitarian assistance.

(*b*) General Assembly

On 11 December 2008, the General Assembly adopted, without reference to a Main Committee, three resolutions dealing with humanitarian matters.

In resolution 63/139, entitled "Strengthening of the coordination of emergency humanitarian assistance of the United Nations", the Assembly urged Member States, the United Nations and other relevant organizations to take further steps to provide coordinated emergency response to food and nutrition needs of affected populations, and to ensure, at the same time, that these measures would be supportive of national strategies and programmes aimed at improving food security. As the Economic and Social Council did in its resolution 2008/36 on the same item, the Assembly encouraged States to create an

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[263] United Nations, *Treaty Series*, vol. 1249, No. 20378.

[264] See *Official Records of the Economic and Social Council, 2008, Supplement No. 7* (E/2008/27), chapter I, section A; see also Economic and Social Council decision 2008/235.

[265] A/63/81-E/2008/71.

[266] A/63/81-E/2008/71, paras. 50-55.

enabling environment for the capacity building of local authorities and national and local non-governmental and community-based organizations in order to ensure better preparedness in providing humanitarian assistance. Furthermore, the United Nations humanitarian organizations were called upon to strengthen the evidence base for humanitarian assistance by further developing common mechanisms to improve the quality, transparency and reliability of humanitarian needs assessments, and to assess their performance in assistance and to ensure the most effective use of humanitarian resources. The Assembly also decided to designate 19 August as World Humanitarian Day in order to contribute to increasing public awareness about humanitarian assistance activities worldwide and the importance of international cooperation in this regard.

In resolution 63/138, entitled "Safety and security of humanitarian personnel and protection of United Nations personnel", the General Assembly recalled that the primary responsibility under international law for the security and protection of humanitarian personnel and United Nations and associated personnel lay with the Government hosting a United Nations operation conducted under the Charter of the United Nations or its agreements with relevant organizations. It further recalled the inclusion of attacks intentionally directed against personnel involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter as a war crime in the Rome Statute of the International Criminal Court.[267] The Assembly further welcomed the report of the Secretary-General,[268] and urged all States to take the necessary measures to ensure the safety and security of humanitarian personnel and United Nations and associated personnel, and to respect and ensure respect for the inviolability of United Nations premises. States were also called upon to consider becoming parties to the Optional Protocol to the Convention on the Safety of United Nations and Associated Personnel[269] and to put in place appropriate national legislation, as necessary, to enable its effective implementation. The Assembly welcomed ongoing efforts to promote and enhance security consciousness within the organizational culture of the United Nations system, urged the Secretary-General to continue to intensify such efforts at all levels of leadership and staff, and took note of the report entitled "Towards a Culture of Security and Accountability" of the Independent Panel on Safety and Security of United Nations Personnel and Premises Worldwide.[270] The Secretary-General was requested, *inter alia*, through the Inter-Agency Security Management Network, to continue to promote increased cooperation and collaboration among United Nations departments, organizations, funds and programmes and affiliated international organizations in the planning and implementation of measures aimed at improving staff security, training and awareness.

In resolution 63/141, entitled "International cooperation on humanitarian assistance in the field of natural disasters, from relief to development", the General Assembly called upon States to fully implement the Hyogo Declaration[271] and the Hyogo Frame-

[267] United Nations, *Treaty Series*, vol. 2187, No. 38544.

[268] A/63/305 and Corr.1.

[269] A/60/518.

[270] "Towards a Culture of Security and Accountability" of the Independent Panel on Safety and Security of United Nations Personnel and Premises Worldwide, 9 June 2008, available at www.un.org/News/dh/infocus/terrorism/PanelOnSafetyReport.pdf.

[271] A/CONF.206/6 and Corr.1, chapter I, resolution 1.

work 2005 2015: Building the Resilience of Nations and Communities to Disasters.[272] The Assembly took note of the report of the Secretary-General,[273] and stressed the importance of strengthening international cooperation, particularly through the effective use of multilateral mechanisms, in the timely provision of humanitarian assistance, including the provision of adequate resources. It requested the United Nations system to improve its coordination of disaster recovery efforts, *inter alia*, by strengthening institutional, coordination and planning efforts in disaster recover, in support of national authorities, and called upon Member States, and invited the private sector and all concerned individuals, to consider increasing voluntary contributions to the Central Emergency Response Fund.

On 18 December 2008, the General Assembly adopted, on the recommendation of the Third Committee, resolution 63/147 entitled "New international humanitarian order", in which the Assembly urged Governments, intergovernmental organizations and civil society, including non-governmental organizations, to extend cooperation and support to the efforts of the Secretary-General in the humanitarian field, *inter alia*, through the relevant United Nations agencies and organizational mechanisms set up to address the assistance and protection needs of affected populations as well as the safety and security of United Nations and other humanitarian workers.

8. Environment

(*a*) Economic and Social Council

On July 24 2008, the Economic and Social Council adopted resolution 2008/25 entitled, "International cooperation in preventing and combating illicit international trafficking in forest products, including timber, wildlife and other forest biological resources". In this resolution, the Council encouraged Member States to continue to provide the United Nations Office on Drugs and Crime with information on measures taken pursuant to the Commission on Crime Prevention and Criminal Justice resolution 16/1, in conjunction with the report of the Open-ended Expert Group on the subject. The Expert Group placed emphasis on the need for a holistic, comprehensive and multicultural approach to preventing and combating illicit international trafficking in forest products.

The Council also adopted resolution 2008/13 entitled "Protection against products harmful to health and environment", in which the Council invited the United Nations Environment Programme and the World Health Organization to continue to update the consolidated list of products whose consumption and/or sale have been banned with respect to chemicals and pharmaceuticals respectively. Both organizations were invited to report to the Council during its substantive session in 2010.

[272] *Ibid*., resolution 2.

[273] A/63/277.

(*b*) General Assembly

On 19 December 2008, the General Assembly adopted, on the recommendation of the Second Committee, twelve resolutions related to the environment, of which four are highlighted below.[274]

In the area of sustainable development, the Assembly recognized, in its resolution 63/216 entitled "International Strategy for Disaster Reduction", the clear relationship between development and disaster risk reduction, response and recovery. The Assembly consequently underlined the need for continued efforts in both directions. In this context, the Assembly stressed the importance of advancing the implementation of the Plan of Implementation of the World Summit on Sustainable Development[275] and its relevant provisions and noted the progress made in the development of regional mechanisms for disaster reduction by member States. The Assembly further called upon the international community to increase its efforts to fully implement the commitments of the Hyogo Declaration and the Hyogo Framework for Action and to continue providing adequate financial contributions to the United Nations Trust Fund for Disaster Reduction.

In its resolution 63/217 entitled "Natural disasters and vulnerability", the Assembly stressed that, in order to reduce natural hazard vulnerability, including geological and hydrometeorological events, closer and more systematic cooperation, and information-sharing on disaster preparedness among the scientific and academic communities including disaster managers at all levels, should be strengthened. The Assembly further emphasized the integration of risk assessments into disaster risk reduction programmes at national and local levels.

In its resolution 63/219, entitled "Convention on Biological Diversity", the Assembly urged all Member States to fulfil their commitments to significantly reduce the rate of loss of biodiversity by 2010, and emphasized that this would require an appropriate focus on the loss of biodiversity in their relevant policies and programmes as well as continued financial and technical assistance to developing countries. The Assembly stressed the importance of private-sector engagement in the implementation of the objectives of the Convention as well as the achievement of the 2010 target, and invited businesses to align their policies and practices more explicitly with the objectives of the Convention.

In its resolution 63/220, entitled "Report of the Governing Council of the United Nations Environment Programme on its tenth special session", the Assembly reaffirmed the role of the United Nations Environment Programme as the leading global environmental authority, including in the area of sustainable development needs of developing countries. The Assembly also took note of the organization's finding that current environmental degradation poses a serious challenge to human wellbeing and sustainable development, in view of unprecedented environmental changes at all levels.[276] The potentially adverse

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[274] See also General Assembly resolutions 63/209, 63/210, 63/211, 63/212, 63/213, 63/214, 63/215 and 63/218.

[275] *Report of the World Summit on Sustainable Development, Johannesburg, South Africa, 26 August–4 September 2002* (United Nations publication, Sales No. E.03.II.A.1 and corrigendum), chap. I, resolution 2, annex.

[276] *Global Environment Outlook: Environment for Development* (United Nations publication, Sales No. E.07.III.D.19).

impact of the current global crisis on sustainable development was also noted. The Assembly consequently invited governments to increase their contributions to the Environment Fund and emphasized the need to mobilize adequate funding to address the Millennium Development Goals and other international development goals.

9. Law of the Sea

(*a*) Reports of the Secretary-General

The Secretary-General, in his reports[277] to the General Assembly at its sixty-third and sixty-fourth 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[278] ("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 2008. 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.[279]

The reports also outlined the work carried out in 2008 by the three bodies established by the Convention, namely, the International Seabed Authority (ISA), the International Tribunal for the Law of the Sea (ITLOS)[280] and the Commission on the Limits of the Continental Shelf (CLCS).

The ISA held its fourteenth session, during which its Council continued the consideration of the draft regulations on prospecting and exploration for polymetallic sulphides in the Area. At the same session, the Legal and Technical Commission of the ISA continued its examination of the draft regulations on prospecting and exploration for cobalt-rich ferromanganese crusts and started the consideration of a proposal relating to the criteria for the establishment of preservation reference zones in the Clarion-Clipperton Zone.[281]

In 2008, the CLCS held its twenty-first and twenty-second sessions,[282] during which it continued the examination of the submissions made, respectively, by Australia, New Zealand, Norway in the North East Atlantic and the Arctic, France in respect of the areas of French Guiana and New Caledonia, as well as the joint submission made by France, Ireland, Spain and the United Kingdom of Great Britain and Northern Ireland in the area of the Celtic Sea and the Bay of Biscay. At the twenty-first session, the CLCS began the consideration of the submission made by Mexico in respect of the western polygon in the

[277] A/63/63/Add.1, A/64/66, A/64/66/Add.1, and A/64/66/Add.2.

[278] United Nations, *Treaty Series*, vol. 1833, p. 3.

[279] *See* A/63/63/Add.1, Chapter III, A/64/66, Chapter III, and A/64/66/Add.1, Chapter III.

[280] For the work of the Tribunal, see chapter VII B of this publication.

[281] For more information on the thirteenth session of the ISA see A/63/63/Add.1, Chapter III, section E.

[282] For more information on the twenty-first and twenty-second sessions of the CLCS see the reports of the Secretary-General, A/63/63/Add.1, chapter III, section D and A/64/66/Add.1, chapter III, section D, as well as CLCS/58 and CLCS/60.

Gulf of Mexico and adopted its recommendations in regard to the submission made by Australia. At the twenty-second session, the CLCS began the consideration of the submissions made, respectively, by Barbados and by the United Kingdom of Great Britain and Northern Ireland in respect of Ascension Island, and adopted its recommendations in regard to the submission made by New Zealand. In 2008, the CLCS also received submissions made, respectively, by Indonesia in respect of North West of Sumatra Island, Japan, Suriname, Myanmar as well as the joint submission made by the Republic of Mauritius and the Republic of Seychelles in the region of the Mascarene Plateau.

The Secretary-General's reports paid special attention to maritime security and safety, the topic chosen for the ninth meeting of the United Nations Open-ended Informal Consultative Process on Oceans and the Law of the Sea, by, *inter alia*, providing an overview of the legal regimes for maritime security and safety, describing the measures taken to address specific threats to maritime security and recent developments in maritime safety and highlighting current challenges in maritime security and safety.[283] The ninth meeting was held in New York from 23 to 27 June 2008.[284]

The reports of the Secretary-General also addressed developments relating to international shipping activities;[285] people at sea;[286] marine science and technology;[287] conservation and management of marine living resources;[288] marine biological diversity;[289] protection and preservation of the marine environment and sustainable development;[290] climate change;[291] international cooperation and coordination,[292] including progress regarding the "assessment of assessments"[293] launched by General Assembly resolution 60/30 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.[294]

The Secretary-General reported also on the settlement of disputes relating to law of the sea matters by the ITLOS[295] and the International Court of Justice.[296]

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[283] *See* A/63/63, chapter V.

[284] *See* A/63/174.

[285] See A/63/63/Add.1, chapter IV; A/64/66/Add.1, chapter V; see also, for the work of the International Maritime Organization, section 6 of chapter 3 B of this publication.

[286] See A/63/63/Add.1, chapter V; A/64/66/Add.1, chapter VI; see also, for the work of the International Labour Organization, section 2 of chapter 3 B of this publication.

[287] See A/63/63/Add.1, chapter VII; A/64/66/Add.1, chapter VIII; A/63/63, chapter VI.

[288] See A/63/63/Add.1, chapter VIII; A/64/66/Add.1, chapter IX.

[289] See A/63/63/Add.1, chapter IX, chapter VIII; A/64/66/Add.1, chapter X; A/64/66/Add.2.

[290] See A/63/63/Add.1, chapter X; A/64/66/Add.1, chapter IX.

[291] See A/63/63/Add.1, chapter XI; A/64/66/Add.1, chapter XII.

[292] See A/63/63/Add.1, chapter XIII; A/64/66/Add.1, chapter XIV; A/63/63, chapter XII.

[293] See A/63/63/Add.1, chapter XIII.B; A/64/65/Add.1, chapter XIV.B.

[294] See A/63/63/Add.1, chapter XIV; A/64/66/Add.1, chapter XV.

[295] Add see A/64/66/Add.1, chapter X, section B. For more information on the work of the International Tribunal for the Law of the Sea, see chapter VII B of this publication.

[296] Add see A/63/63/Add.1, chapter X, section A and A/64/66/Add.1, chapter X, section A. For more information on the work of the International Court of Justice, see section 17 of this chapter, and chapter VII A of this publication.

With respect to marine biological diversity, the report included information on 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, which met from 28 April to 2 May 2008, in accordance with General Assembly resolutions 61/222 and 62/215. The outcome of the meeting consisted of a joint statement of the Co-Chairpersons,[297] which provided a summary of key issues, ideas and proposals raised during the meeting under the various agenda items, as well as some concluding remarks based on their assessment of the discussions. The meeting addressed, *inter alia*: marine genetic resources, including the relevant legal regime in areas beyond national jurisdiction in accordance with the Convention, and whether there was a governance or regulatory gap, and if so, how it should be addressed.

In his report to the General Assembly on sustainable fisheries,[298] the Secretary-General provided 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. Special attention was given to the implementation of the 1995 United Nations Fish Stocks Agreement. The report 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. Special emphasis was further given to international cooperation in enhancing capacity-building and assistance to developing States, as well as the importance of cooperation and coordination within the United Nations system in addressing marine issues.

The Secretary-General also reported on the seventh round of Informal Consultations of States Parties to the United Nations Fish Stocks Agreement,[299] which was held in New York on 11 and 12 March 2008, in accordance with paragraph 29 of General Assembly resolution 62/177 of 18 December 2007.[300]

The Informal Consultations were entrusted by the General Assembly to discuss the implementation of the Agreement at the subregional, regional and global level, taking into consideration the outcome of the Review Conference as regards proposed means of strengthening the implementation of the Agreement, promoting wider participation in the Agreement and making any appropriate recommendations to be considered by the General Assembly. Discussion focused on measures taken by States since the 2006 Review Confer-

[297] See A/63/79.

[298] See A/63/128.

[299] 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, 4 August 1995. United Nations, *Treaty Series*, vol. 2167, p. 3.

[300] See A/63/63/Add.1, chapter II.C.

ence to further implement the Agreement; including measures aimed at: (a) enhancing the conservation and management of straddling fish stocks and highly migratory fish stocks; (b) strengthening of monitoring, control, surveillance and enforcement in the context of combating illegal, unreported and unregulated (IUU) fishing; (c) providing capacity-building to developing States pursuant to part VII of the Agreement; (d) promoting wider participation in the Agreement; and (e) initiating preparatory work for the resumption of the Review Conference.

At the end of the session, States agreed to recommend to the General Assembly, *inter alia*, the following:

(*a*) To request the Secretary-General to resume in 2010 the Review Conference convened pursuant to article 36 of the Agreement and to begin the necessary preparatory work, and adopt budgetary decisions in this regard; and

(*b*) To request the Secretary-General to convene an eighth round of Informal Consultations in 2009 for a duration of at least four days to consider, *inter alia*, promoting a wider participation in the Agreement through a continuing dialogue and initial preparatory work for the resumption of the Review Conference, and to make any appropriate recommendation to the General Assembly.

(*b*) Consideration by the General Assembly

(i) *Oceans and law of the sea*

The General Assembly commenced its consideration of the agenda item "Oceans and the law of the sea" on 4 December 2008. On 5 December 2008, the General Assembly, without reference to a Main Committee, adopted resolution 63/111 entitled "Oceans and the law of the sea".

The resolution is divided into 17 sections and covers 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 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.

In relation to maritime safety and security, the Assembly recalled that all actions taken to combat threats to maritime security must be in accordance with international law, including the principles embodied in the Charter and the United Nations Convention on the Law of the Sea. It also called upon States to take appropriate steps under their national law to facilitate the apprehension and prosecution of those who are alleged to have committed acts of piracy, and urged them, in cooperation with the International Maritime Organization, to actively combat piracy and armed robbery at sea by adopting measures and national legislation, among others. The Assembly further noted the adop-

tion by the Security Council of resolutions 1816 (2008) of 2 June 2008 and 1838 (2008) of 7 October 2008, and also noted that the authorization in resolution 1816 (2008) and the provisions in resolution 1838 (2008) apply only to the situation in Somalia and do not affect the rights, obligations or responsibilities of Member States under international law, including any rights or obligations under the Convention, with respect to any other situation, and underscored in particular the fact that they are not to be considered as establishing customary international law. In relation to flag State implementation, the Assembly urged flag States without an effective maritime administration and appropriate legal frameworks to establish or enhance the necessary infrastructure, legislative and enforcement capabilities to ensure effective compliance with, and implementation and enforcement of, their responsibilities under international law and, until such action is taken, to consider declining the granting of the right to fly their flag to new vessels, suspending their registry or not opening a registry, and called upon flag and port States to take all measures consistent with international law necessary to prevent the operation of substandard vessels.

With regard to marine biodiversity, the Assembly noted the discussion on the relevant legal regime on marine genetic resources in areas beyond national jurisdiction in accordance with the United Nations Convention on the Law of the Sea, and called upon States to further consider this issue in the context of the mandate 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 relation to marine science, the Assembly encouraged the Advisory Body of Experts on the Law of the Sea of the Oceanographic Commission to continue its work on the legal framework, within the context of the Convention, which is applicable to the collection of oceanographic data by other specific means.

(ii) *Sustainable fisheries*

Also on 5 December 2008, the General Assembly adopted, without reference to a Main Committee, resolution 63/112 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 is divided into 13 sections and addresses 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, surveillance, 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.

In furtherance of the implementation of the Agreement, the Assembly requested the Secretary-General to convene in 2009 an eighth round of informal consultations of States Parties to the Agreement, and to resume the Review Conference on the Agreement, in New York in 2010.

In relation to illegal, unreported and unregulated fishing, the Assembly reaffirmed the need to strengthen, where necessary, the international legal framework for intergov-

ernmental cooperation, in particular at the subregional and regional levels, in the management of fish stocks and in combating illegal, unreported and unregulated fishing, in a manner consistent with international law. It also urged enhanced action consistent with international law, including cooperation and coordination, to eliminate illegal, unreported and unregulated fishing by vessels flying "flags of convenience", to require that a "genuine link" be established between States and fishing vessels flying their flags, and to clarify the role of the "genuine link" in relation to the duty of States to exercise effective control over such vessels. The Assembly noted the concerns about possible connections between international organized crime and illegal fishing in certain regions of the world, and encouraged States, including through the appropriate international forums and organizations, to study the causes and methods of, and contributing factors to, illegal fishing to increase knowledge and understanding of those possible connections, and to make the findings publicly available, bearing in mind the distinct legal regimes and remedies under international law applicable to illegal fishing and international organized crime.

With regard to regional and subregional cooperation, the Assembly encouraged the development of regional guidelines for States to use in establishing sanctions for non-compliance by vessels flying their flag and by their nationals, to be applied in accordance with national law, that are adequate in severity for effectively securing compliance, deterring further violations and depriving offenders of the benefits deriving from their illegal activities, as well as in evaluating their systems of sanctions to ensure that they are effective in securing compliance and deterring violations.

(*c*) Piracy and armed robberies against ships off the coast of Somalia

In response to a considerable increase in the number of incidents of piracy and armed robbery off the coast of Somalia, a number of United Nations entities, including the Security Council, the General Assembly and the International Maritime Organization adopted measures for the repression of such acts.[301]

10. Crime prevention and criminal justice[302]

The second session of the Conference of the States parties to the United Nations Convention against Corruption[303] was held in Nusa Dua, Indonesia, from 28 January to 1 February 2008.[304] The fourth session of the Conference of the Parties to the United Nations Con-

[301] See further section 2 (g) of this chapter.

[302] 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 covered. For more 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.

[303] United Nations, *Treaty Series*, vol. 2349, p. 41.

[304] For the decisions and resolutions of the Conference, see http://www.unodc.org/unodc/en/treaties/CAC/CAC-COSP.html.

vention Against Transnational Organized Crime[305] and its Protocols[306] was held in Vienna from 8 to 17 October 2008.[307]

(*a*) Commission on Crime Prevention and Criminal Justice

The Commission on Crime Prevention and Criminal Justice (CCPCJ) was established by the Economic and Social Council in its resolution 1992/1 of 6 February 1992 as a functional commission to deal with a broad scope of policy matters in this field, including combating national and transnational crime, including organized crime, economic crime and money laundering; promoting the role of criminal law in environmental protection, crime prevention in urban areas, including juvenile crime and violence; and improving the efficiency and fairness of criminal justice administration systems. Aspects of these principal themes are selected for discussion at each of its annual sessions. The Commission also provides substantive and organizational direction for the quinquennial United Nations Congress on Crime Prevention and Criminal Justice.

The seventeenth session of the Commission on Crime Prevention and Criminal Justice was held in Vienna on 30 November 2007 and was reconvened from 14 to 18 April 2008. 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 aspects of violence against women. In its annual report,[308] CCPCJ brought to the attention of the Economic and Social Council its resolution 17/1 entitled "Efforts in the fight against trafficking in persons". In the said resolution, CCPCJ welcomed the Vienna Forum to Fight Human Trafficking, held from 13 to 15 February 2008, as a part of the awareness-raising efforts to fight human trafficking and requested UNODC to ensure that the Global Initiative to Fight Human Trafficking was carried out as a technical assistance project.

(*b*) Economic and Social Council

On 24 July 2008, following the submission by the Commission on Crime Prevention and Criminal Justice of draft resolutions on this item, the Economic and Social Council adopted three resolutions which are highlighted below.

In resolution 2008/23, entitled "Protection against trafficking in cultural property", the Council encouraged Member States asserting State ownership of cultural property to consider means of issuing statements of such ownership with the view to facilitating the

[305] United Nations, *Treaty Series* , vol. 2225, p. 209.

[306] 2000 Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, contained in A/55/383; 2000 Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, contained in A/55/383; and 2001 Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime, contained in A/55/383/Add.2.

[307] For the decisions of the Conference, see http://www.unodc.org/unodc/en/treaties/ctoc-cop-session4-decisions.html.

[308] For the report on the seventeenth session of CCPCJ, see E/CN.15/2008/22.

enforcement of property claims in other States. The Council also urged Member States and relevant institutions to fully implement mechanisms to strengthen international cooperation, including mutual assistance for the prevention and prosecution of crime against cultural property that forms part of the cultural heritage of peoples, and to ratify and implement the relevant international instruments. Furthermore, Member States were encouraged to introduce appropriate legislation, in particular procedures for the seizure, return or restitution of cultural property, and to take national initiatives for the protection of cultural property.

In resolution 2008/24, entitled "Strengthening prevention of urban crime: an integrated approach", the Council encouraged Member States to adopt and strengthen effective urban crime prevention responses, as well as to integrate crime prevention into all relevant social and economic policies and programmes in order to address the conditions in which crime and violence could emerge. The Council also requested UNODC to explicitly address the crime prevention component in its programme of work and reporting, including good practices that integrate crime prevention and criminal justice.

The Council also adopted resolution 2008/25, entitled "International cooperation in preventing and combating illicit international trafficking in forest products, including timber, wildlife and other forest biological resources". In the resolution, the Council noted the report of the meeting of the Open-ended Expert Group on International Cooperation in Preventing and Combating Illicit International Trafficking in Forest Products, including Timber, Wildlife and Other Forest Biological Resources, held in Jakarta from 26 to 28 March 2008.[309] The Council requested the Executive Director of UNODC to make available the text of the present resolution and the report of the Open-ended Expert Group to the Conference of the Parties to the United Nations Convention against Transnational Organized Crimes at its fourth session. The Executive Director of UNODC was also requested to report on the implementation of the present resolution and to provide a summary of the mandates and the work of other relevant organizations in this area to CCPCJ at its eighteenth session.

Further, on 25 July 2008, without reference to a Main Committee, the Economic and Social Council adopted resolution 2008/33, entitled "Strengthening coordination of the United Nations and other efforts in fighting trafficking in persons". CCPCJ brought to the attention of the Council its resolution 17/1 entitled "Efforts in the fight against trafficking in persons",[310] which underlined the need to continue to work towards a comprehensive and coordinated approach to the problem of human trafficking through the appropriate national, regional and international mechanisms. In its resolution, the Council welcomed the work carried out under the United Nations Global Initiative to Fight Human Trafficking and encouraged UNODC to continue to cooperate with relevant international organizations outside of the United Nations system.[311]

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[309] E/CN.15/2008/20.

[310] See *Official Records of the Economic and Social Council, 2008, Supplement No. 10*, (E/2008/30), chap. I, sect. D.

[311] For further information concerning trafficking in persons, see section (f) (vii) of the current chapter.

(*c*) General Assembly

On 18 December 2007, the General Assembly adopted, on the recommendation of the Third Committee, four resolutions under this agenda item, of which three are highlighted below.[312]

In its resolution 63/193, entitled "Preparations for the Twelfth United Nations Congress on Crime Prevention and Criminal Justice", the General Assembly, taking note of the report of the Intergovernmental Group and Criminal Justice,[313] decided to hold the Twelfth Congress on Crime Prevention and Criminal Justice in Salvador, Brazil, from 12 to 19 April 2010, and that the main theme of the Twelfth Congress would be "Comprehensive strategies for global challenges: crime prevention and criminal justice systems and their development in a changing world".

In its resolution 63/194, entitled "Improving the coordination of efforts against trafficking in persons", the General Assembly, *inter alia*, called upon Governments to continue their efforts to criminalize trafficking in persons in all its forms, including for the sexual exploitation of children, to take measures to criminalize child sex tourism, to condemn the practice of trafficking in persons, and to investigate, prosecute, condemn and penalize traffickers and intermediaries, while providing protection and assistance to the victims of trafficking with full respect for their human rights. In addition, it requested UNODC to continue consultations with Member States, to ensure that the Global Initiative to Fight Human Trafficking was carried out as a technical assistance project. The Secretary-General was requested to ensure the full and effective implementation of all legal instruments relevant to trafficking in persons. Furthermore, the General Assembly invited the Member States to accelerate the consideration of the advisability of a global plan of action on preventing trafficking in persons, prosecuting traffickers and protecting and assisting victims of trafficking, which would achieve the full and effective coordination of efforts against trafficking in persons.

In its resolution 63/195, entitled the "Strengthening the United Nations Crime Prevention and Criminal Justice Programme, in particular its technical cooperation capacity", the Assembly requested, *inter alia*, that UNODC continue to develop tools for providing technical assistance and cooperation to effectively counter kidnapping as a growing serious crime, and to increase collaboration with intergovernmental, international and regional organizations that have transnational organized crime mandates in order to share best practices. In addition, the General Assembly urged Member States and relevant international organizations to develop national and regional strategies, and other necessary measures, in cooperation with the United Nations Crime Prevention and Criminal Justice Programme, to address effectively transnational organized crime, including trafficking in persons, the smuggling of migrants and illicit manufacturing of and transnational trafficking in firearms, as well as corruption and terrorism.

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[312] The General Assembly also adopted resolution 63/196 entitled "United Nations African Institute for the Prevention of Crime and the Treatment of Offenders".

[313] E/CN.15/2007/6.

11. International drug control[314]

(*a*) Commission on Narcotic Drugs

The Commission on Narcotic Drugs was established by the Economic and Social Council in its resolution 9 (I) of 16 February 1946 as a functional commission and as the central policy-making body within the United Nations system dealing with drug-related matters. Pursuant to Economic and Social Council Resolution 1999/30, the Commission's agenda is structured in two distinct segments: one relating to its normative functions and one to its role as governing body of the United Nations International Drug Control Programme. Furthermore, the Commission also convenes ministerial-level segments of its sessions to focus on specific themes. During its fifty-first session,[315] held on 28 November 2007 and 10 to 14 March 2008, in Vienna, the Commission held a thematic debate on the "Progress achieved by Governments in meeting the goals for years 2003 and 2008 set out in the Political Declaration adopted by the Assembly at its twentieth special session." Deliberations centred on three sub-themes: "Shared responsibility as a basis for an integrated, balanced and sustainable approach to the fight against drugs through national and international policies"; "Drug demand reduction"; and "Countering illicit drug supply".

Eighteen resolutions and one decision were adopted by the Commission and brought to the attention of the Economic and Social Council.[316] Five resolutions are highlighted below.

In resolution 51/10 entitled "Strengthening international cooperation for the control of precursor chemicals used in the manufacture of synthetic drugs", Member States were urged to work closely with the relevant industries in the implementation of effective procedures for the control and monitoring of preparations containing substances that can be easily used for the illicit manufacture of drugs.

In resolution 51/11 entitled "Links between illicit drug trafficking and illicit firearms trafficking", Member States were encouraged to exchange information and provide judicial cooperation in order to identify and investigate possible links between drug trafficking activities and those related to the illicit manufacturing of, and trafficking in, firearms and ammunition.

In resolution 51/17 entitled "Reducing the demand for and abuse of cannabis", the Commission called upon States to ensure national restrictions on narcotic drugs and psychotropic substances in relation to cannabis and also to comply fully with the provisions of the international drug control conventions with regard to cannabis.

The Commission further adopted resolution 51/18 entitled "Strengthening international support for States in West Africa in their efforts to combat drug trafficking", in which Member States and relevant international organizations, in coordination with the

[314] This section covers the sessions of the General Assembly, the Economic and Social Council and the Commission on Narcotic Drugs. Selected resolutions and decisions are highlighted. Resolutions recommending the adoption of subsequent resolutions by another organ are not covered. For detailed information regarding this topic generally, see the website of the United Nations Office on Drugs and Crime at http://www.unodc.org.

[315] For the report of the Commission, see *Official Records of the Economic and Social Council, 2008, Supplement No.8* (E/2008/28).

[316] For a complete list of the resolutions and decisions, see E/CN.7/2008/15.

Economic Community of West African States, were called upon to strengthen ongoing initiatives and programmes to combat drug trafficking in West-Africa by providing technical and financial assistance.

By decision 51/1 entitled "Improving the governance and financial situation of the United Nations Office on Drugs and Crime", the Commission decided to establish an open-ended intergovernmental working group on how to improve the governance structure and financial situation of the United Nations Office on Drugs and Crime. The United Nations Office on Drugs and Crime was further requested to provide the working group with the necessary assistance to facilitate its work.

(*b*) Economic and Social Council

On 24 July 2008, the Economic and Social Council adopted, on the recommendation of the Commission on Narcotic Drugs, two resolutions, which are highlighted below, and two decisions.[317]

In its resolution 2008/26 entitled "Promoting sustainability and integrality in alternative development as an important part of drug control strategy in States where illicit crops are grown to produce drugs", the Council called on Member States to consider measures to enable products of alternative development to have easier access to markets, taking into account applicable multilateral trade rules. Relevant international organizations were also urged to consider measures enabling products of alternative development to have easier access to markets.

Member States were additionally encouraged to consider developing a set of international guiding principles on alternative development, based on the sharing of best practices and lessons learned in different countries and regions, an example being the sustainable alternative livelihood development of Thailand, annexed to the resolution.

In its resolution 2008/27 entitled "Provision of international assistance to the most affected States neighboring Afghanistan", the Council called upon the Government of Afghanistan to intensify its efforts to implement the eight pillars of the National Drug Control Strategy[318] in order to identify and dismantle laboratories illicitly manufacturing heroin and morphine as well as to trace and curb the illicit supply of precursors. Member States and the UNODC were also called upon to provide the technical assistance and support needed for strengthening the initiatives of Afghanistan, the Islamic Republic of Iran and Pakistan against drug trafficking. In addition, States neighboring Afghanistan were encouraged to enhance coordination through existing regional mechanisms for strengthening border cooperation and information exchange.

[317] Decisions 2008/247 on the "Report of the Commission on Narcotic Drugs on its fifty-first session and provisional agenda and documentation for the fifty-second session of the Commission"; and 2008/248 on the "Report of the International Narcotics Control Board".

[318] Contained in Annex A of S/2006/106.

(*c*) General Assembly

On 18 December 2008, the General Assembly, on the recommendation of the Third Committee, adopted resolution 63/197 entitled "International cooperation against the world drug problem". In this resolution, the General Assembly, *inter alia*, called upon States and other relevant actors to evaluate the progress made since 1998 towards meeting the goals and targets set at the twentieth special session of the General Assembly.

In particular, the Assembly encouraged States to take measures to make drug demand reduction and drug abuse prevention governmental health and social priorities, and to include civil society and the family unit, in the process of developing, implementing and evaluating relevant policies and programmes. The Assembly further called upon States and organizations with expertise in community capacity-building to provide access to health care and social services for drug users, especially those living with HIV/AIDS and other blood-borne diseases, and to extend support to States requiring such expertise.

Member States that had not done so were also encouraged to consider updating their legal and regulatory frameworks, in particular regarding the identification, freezing and confiscation of proceeds of drug trafficking crimes, in order to effectively prevent and combat money-laundering activities.

12. Refugees and displaced persons[319]

(*a*) Executive Committee of the Programme of the United Nations High Commissioner for Refugees[320]

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 and reports to it through the Third Committee. The Executive Committee meets annually in Geneva to review and approve the programmes and budget of UNHCR and its intergovernmental and non-governmental partners. The fifty-ninth session of the Executive Committee was held in Geneva from 6 to 10 October 2008,[321] during which it adopted the "General Conclusion on International Protection".

In the General Conclusion, the Executive Committee urged UNHCR and its partners to continue to draw appropriately upon relevant international humanitarian and human rights law and, in cooperation with States, to adopt a rights- and community-based approach in their work, in order to constructively engage with individual persons of concern and their communities. This includes partnership with relevant international and national human rights organizations as well as the active and inclusive participation of persons of concern.

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[319] For a complete list of signatories and States parties to international instruments relating to refugees that are deposited with the Secretary-General, see *Multilateral Treaties Deposited with the Secretary-General* available at http://untreaty.un.org/English/treaty.aspx.

[320] For detailed information and documents regarding this topic generally, see the website of UNHCR at www.unhcr.org.

[321] For the report of the fifty-ninth session of the Executive Committee, see *Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 12A* (A/63/12/Add.1).

Furthermore, the Executive Committee expressed deep concern over current and persistent protection problems facing persons of concern, including: rejection of refugees and asylum-seekers at frontiers without examination of claims for asylum or safeguards to prevent *refoulement*, long-term detention, continuing sexual and gender-based violence, and manifestations of xenophobia, racism and related intolerance. States were therefore, *inter alia,* called upon to scrupulously respect the principle of *non-refoulement*, to take steps to prevent acts of violence against refugees and other persons of concern and to facilitate their access without discrimination to effective legal remedies. The Executive Committee stressed the importance of UNHCR being granted access to asylum applicants and refugees to enable the Office to effectively carry out its humanitarian protection functions, and urged States and other parties to cooperate with the High Commissioner in the performance of his functions.

Regarding refugees and others of concern with disabilities, the Executive Committee emphasized the importance of promoting a protection and reception environment, with particular attention given to the vulnerability of children and women, that encourages their systematic inclusion in all areas of society, including in national programmes and policies. The Executive Committee also stressed the mobilization of financial and other necessary resources to support host countries efforts in this regard.

The Executive Committee reaffirmed the strategic use of resettlement as an instrument of protection, especially to resolve protracted refugee situations. States without existing resettlement programmes were urged to offer places for refugees recognized by UNHCR and in need of third country resettlement, while States with existing programmes were encouraged to consider making available more places for resettlement.

The Executive Committee further noted that the primary responsibility for the welfare and protection of internally displaced persons lay with the State concerned, and reaffirmed its support for UNHCR role with internally displaced persons according to criteria specified by the General Assembly, which included not undermining the mandate of the Office for Refugees and the institution of asylum.

States were encouraged to prevent and reduce statelessness by adopting and implementing safeguards in nationality laws and policies, consistent with fundamental principles of international law, and to consider facilitating the naturalization of habitually and lawfully residing stateless persons in accordance with national legislation.

(*b*) United Nations Economic and Social Council

On 25 July 2008, the United Nations Economic and Social Council adopted decision 2008/25 entitled "Enlargement of the Executive Committee of the Programme of the United Nations High Commissioner for Refugees", in which the Council recommended that the General Assembly, at its sixty-third session, decide on the question of enlarging the membership of the Executive Committee from seventy-six to seventy-eight States.

(*c*) General Assembly

On 18 December 2008, the General Assembly adopted, on the recommendation of the Third Committee, resolution 63/146[322] entitled "Enlargement of the Executive Committee of the Programme of the United Nations High Commissioner for Refugees", in which the Assembly decided to increase the number of members of the Executive Committee of the Programme of the United Nations High Commissioner for Refugees from seventy-six to seventy-eight States and requested the Economic and Social Council to elect the additional members at its resumed organizational session in 2009.

On the same date, the General Assembly adopted, also on the recommendation of the Third Committee, resolution 63/149 entitled "Assistance to refugees, returnees and displaced persons in Africa", in which the Assembly called upon the international donor community to provide material and financial assistance to support programmes intended for the rehabilitation of the environment and infrastructure affected by refugees in countries of asylum, taking into account the increased needs of programmes in Africa. The Office of the High Commissioner for Refugees as well as interested States were also encouraged to identify protracted refugee situations which might benefit from comprehensive approaches such as the enhancement of international burden- and responsibility-sharing solutions.

13. International Court of Justice[323]

(*a*) Organization of the Court

In 2008 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); and Leonid Skotnikov (Russian Federation).

The Registrar of the Court, re-elected on 8 February 2007 for a new term of seven years, is Mr. Philippe Couvreur; the Deputy-Registrar, elected on 9 October 2007, also for a term of seven years as from 19 February 2008, is Ms. Thérèse de Saint Phalle.

The Chamber of Summary Procedure, comprising five judges, including the President and Vice-President, and two substitutes, which is established annually by the Court

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[322] For other resolutions dealing with refugees, see resolution 63/147 entitled "New international humanitarian order", resolution 63/148 entitled "Office of the United Nations High Commission for Refugees" and resolution 62/249 entitled "Status of internally displaced persons and refugees from Abkhazia, Georgia", adopted on the same date on the recommendation of the Third Committee.

[323] For more information about the Court, see the report of the International Court of Justice to the General Assembly, *Official records of the General Assembly, Sixty-third Session, Supplement No. 4* (A/63/4) and *Official records of the General Assembly, Sixty-fourth Session, Supplement No. 4* (A/64/4). Information about the cases before the International Court of Justice during 2008 is contained in chapter VII of this publication.

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.

On 6 November 2008, the General Assembly and the Security Council elected five members to the International Court of Justice for a term of office of nine years, beginning on 6 February 2009. As a result, Mr. Ronny Abraham (France) and Mr. Awn Shawkat Al-Khasawneh (Jordan) were re-elected as members of the Court; and Mr. Antônio Augusto Cançado Trindade (Brazil), Mr. Christopher Greenwood (United Kingdom of Great Britain and Northern Ireland) and Mr. Abdulqawi Ahmed Yusuf (Somalia) were elected members of the Court.[324]

(*b*) Jurisdiction of the Court

On 30 April 2008, the Federal Republic of Germany made a new declaration recognizing the compulsory jurisdiction of the Court, which reads as follows:[325]

"The Government of the Federal Republic of Germany declares that it recognizes as compulsory *ipso facto* and without special agreement, in relation to any other state accepting the same obligation, the jurisdiction of the International Court of Justice, in conformity with paragraph 2 of Article 36 of the Statute of the Court, until such time as notice may be given to the Secretary-General of the United Nations withdrawing the declaration and with effect as from the moment of such notification, over all disputes arising after the present declaration, with regard to situations or facts subsequent to this date other than:

(i) any dispute which the Parties thereto have agreed or shall agree to have recourse to some other method of peaceful settlement or which is subject to another method of peaceful settlement chosen by all the Parties.

(ii) any dispute which

(a) relates to, arises from or is connected with the deployment of armed forces abroad, involvement in such deployments or decisions thereon, or

(b) relates to, arises from or is connected with the use for military purposes of the territory of the Federal Republic of Germany, including its airspace, as well as maritime areas subject to German sovereign rights and jurisdiction;

(iii) 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 jurisdic-

[324] Decision 63/406 of the General Assembly, *Official Records of the General Assembly, Sixty-third Session, Supplement No. 49* (A/63/49), p. 7.

[325] Registered on 1 May 2008 under No. 44914.

tion on behalf of any other Party to the dispute was deposited or ratified less than twelve months prior to the filing of the application bringing the dispute before the Court.

2. The Government of the Federal Republic of Germany also reserves the right at any time, by means of a notification addressed to the Secretary-General of the United Nations, and with effect as from the moment of such notification, either to add to, amend or withdraw any of the foregoing reservations, or any that may hereafter be added.

Accept, Mr. Secretary-General, the expression of my highest consideration.

[*Signed*] Frank-Walter Steinmeier"

In a letter dated 31 January 2007, the Registrar of the Court notified Serbia that, in its Judgment of 15 December 2004, the Court concluded that Serbia and Montenegro was not a member of the United Nations and therefore was not a party to the Statute of the Court at the time that it filed its application to institute the proceedings before the Court on 29 April 1999. In the light of the above-mentioned letter from the Registrar of the Court clarifying the status of Serbia with respect to the Statute, and after confirmation from Serbia, on 13 May 2008, that it did not recognize the declaration of 26 April 1999 made by the Federal Republic of Yugoslavia, the name of Serbia was removed from the list of States which had made declarations under Article 36, paragraph 2, of the Statute.

(*c*) General Assembly

Following the declaration of independence from Serbia proclaimed on 17 February 2008 by the Provisional Institutions of Self-Government of Kosovo, the General Assembly adopted on 8 October 2008 resolution 63/3, in which it decided, in accordance with Article 96 of the Charter of the United Nations, to request the International Court of Justice, pursuant to Article 65 of the Statute of the Court, to render an advisory opinion on the following question:

"Is the unilateral declaration of independence by the Provisional Institutions of Self-Government of Kosovo in accordance with international law?"[326]

On 2 December 2008, the General Assembly adopted resolution 63/49 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*",[327] in which the Assembly underlined once again the unanimous conclusion of the International Court of Justice that there existed 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.

At its sixty-third session, the General Assembly adopted on 30 October 2008, without reference to a Main Committee, decision 63/508, in which the Assembly took note of the report of the International Court of Justice for the period from 1 August 2007 to 31 August 2008.[328]

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[326] The Provisional Institutions of Self-Government of Kosovo declared independence from Serbia on 17 February 2008.

[327] *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996*, p. 226.

[328] *Official Records of the General Assembly, Sixty-third Session, Supplement No. 4* (A/63/49).

14. International Law Commission[329]

(*a*) Membership of the Commission

The membership of the International Law Commission at its sixtieth session was: 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. Zdzislaw 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*) Sixtieth session of the Commission

The International Law Commission held the first part of its sixtieth session from 5 May to 6 June 2008 and the second part from 7 July to 8 August 2008 at its seat at the United Nations Office at Geneva.[330] The topics that were considered are highlighted below.

In its consideration of the topic "Shared natural resources", the Commission had before it the fifth report[331] of the Special Rapporteur on the law of transboundary aquifers, together with comments and observations received from Governments on the draft articles adopted on first reading. The Commission adopted, on second reading, a preamble and a set of 19 draft articles on the law of transboundary aquifers and recommended, in accordance with article 23 of its Statute, a two-step approach by which the General Assembly would take note of the draft articles to be annexed to its resolution and recommend that States concerned make appropriate bilateral and regional arrangements for the proper management of their transboundary aquifers, and consider, at a later stage, the elaboration of a convention on the basis of the draft articles. Having recommended this two-step approach, it was considered premature to address issues relating to the relationship of the draft articles with other agreements and dispute settlement.

Concerning the topic "Effects of armed conflicts on treaties", the Commission had before it the fourth report[332] of the Special Rapporteur dealing with the procedure for the suspension or termination of treaties as a consequence of an armed conflict. The Working

[329] Detailed information and documents regarding the work of the Commission may be found on the Commission's website at http://www.un.org/law/ilc/index.htm.

[330] For the report of the International Law Commission on the work of its sixtieth session, see *Official Records of the General Assembly, Sixty-third Session, Supplement No. 10* (A/63/10).

[331] A/CN.4/591

[332] A/CN.4/589

Group on the Effects of Armed Conflicts on Treaties, re-established by the Commission on 16 May 2008, considered the report in the context of a number of outstanding issues identified by the Commission at its fifty-ninth session in 2007. At its 2968th meeting, on 29 May 2008, the Commission adopted the report of the Working Group.[333] The Commission provisionally adopted, on first reading, a set of 18 draft articles and an annex. In accordance with articles 16 to 21 of its Statute, the Commission decided to transmit the draft articles, through the Secretary-General to Governments for comments and observations, with a request that such comments and observations be submitted to the Secretary-General by 1 January 2010.

Regarding the topic "Reservation to treaties", the Commission adopted 23 draft guidelines dealing with the formulation and withdrawal of acceptances and objections, as well as the procedure for acceptance of reservations. In its consideration of these draft guidelines, the Commission proceeded on the basis of the Special Rapporteur's note on a new draft guideline[334] on statement of reasons for reservations, as well as draft guidelines contained in the eleventh and twelfth reports of the Special Rapporteur which were referred to the Drafting Committee in 2007. The Commission also considered the thirteenth report[335] of the Special Rapporteur on reactions to interpretative declarations and referred to the Drafting Committee's 10 draft guidelines on reactions to interpretative declarations. Key issues in the debate on the topic concerned the relation between conditional interpretative declarations and reservations, as well as the effects of silence as a reaction to an interpretative declaration.

Concerning the topic "Responsibility of international organizations", the Commission provisionally adopted eight draft articles dealing with the invocation of the international responsibility of an international organization. These constituted chapter I of part three of the draft articles concerning the implementation of the international responsibility of an international organization. In its consideration of the topic, the Commission had before it the sixth report[336] of the Special Rapporteur which focused on issues relating to the implementation of the responsibility of international organizations. The Commission's debate on the report focused on issues relating to countermeasures.

In connection with the topic "Expulsion of aliens", the Commission considered the fourth report[337] of the Special Rapporteur, dealing with questions relating to the expulsion of dual or multiple nationals, and the loss of nationality and denationalization in relation to expulsion. Following the debate on the report, the Commission established a working group to consider the issues raised by the Special Rapporteur in his report. At the end of its meeting on 14 July 2008, the Working Group concluded that the draft articles should indicate that, for the purposes of the draft articles, the principle of the non-expulsion of nationals applied also to persons who had legally acquired one or several other nationalities. The Group also agreed to include in the commentary wording to make it clear that States should not use denationalization as a means of circumventing their obligations under the principle of the non-expulsion of nationals. On 24 July 2008, the Commission

[333] A/CN.4/L.726.

[334] A/CN.4/586.

[335] A/CN.4/600.

[336] A/CN.4/597.

[337] A.CN.4/594.

approved those conclusions, and requested the Drafting Committee to take them into consideration in its work.

In relation to the topic "Protection of persons in the event of disasters", the Commission held a debate on the basis of the preliminary report[338] of the Special Rapporteur. It also had before it a memorandum by the Secretariat,[339] focusing primarily on natural disasters. Issues discussed during the debate included whether, as suggested by the Special Rapporteur, a rights-based approach should be adopted in the consideration of the topic, what the scope of the topic should be *ratione materiae, ratione personae*, *ratione temporis* and *ratione loci*. The question of a right to humanitarian assistance, and the relevance of the responsibility to protect, were also discussed.

Regarding the topic "Immunity of State officials from foreign criminal jurisdiction", the Commission held a debate on the basis of the preliminary report[340] of the Special Rapporteur. It also had before it a memorandum by the Secretariat.[341] Among the issues discussed were the main legal questions to be considered when defining the scope of the topic, including the officials, and the nature of the acts to be covered.

In connection with the topic "The obligation to extradite or prosecute (*aut dedere aut judicare*)", the Commission held a debate on the basis of the third report[342] of the Special Rapporteur, as well as comments and information received from Governments. Among the issues discussed were the substantive questions relating to the customary nature of the obligation, the relationship of the obligation to extradite and prosecute with the principle of universal jurisdiction and the surrender of an alleged offender to an international court, as well as procedural aspects to be dealt with in future.

Furthermore, the Commission set up a Planning Group to consider its programme, procedures and working methods. A Working Group on the long-term programme of work was also reconstituted. The Commission decided to include in its current programme of work two new topics, namely "Treaties over time" and "The Most-favoured-Nation clause". In this regard, it decided to establish, at its next session two study groups on these topics.

(*c*) Sixth Committee

The Sixth Committee considered agenda item 75 entitled "Report of the International Law Commission on the work of its sixtieth session" at its 16th to 26th meetings, from 27 to 31 October, and from 3 to 5 and on 14 November 2008, respectively.[343]

The Chairman of the International Law Commission at its sixtieth session introduced the report of the Commission: chapters I to V and XII at the 16th meeting, on 27 October,

[338] A/CN.4/598.

[339] See *Official Records of the General Assembly, Sixty-third session, Supplement No.10 (A/63/10),* para. 215.

[340] A/CN.4/601.

[341] A/CN.4/596.

[342] A/CN.4/603.

[343] A summary of the debates can be found in Topical summary of the discussion held in the Sixth Committee of the General Assembly during its sixty-third session, prepared by the Secretariat, A/CN.4/606.

chapters VI, VII and VIII at the 18th meeting, on 29 October, and chapters IX, X and XI at the 22nd meeting, on 31 October.[344]

At the 26th meeting, on 14 November 2008, the representative of New Zealand, on behalf of the Bureau, introduced a draft resolution entitled "Report of the International Law Commission on the work of its sixtieth session" (A/C.6/63/L.20), and orally revised it by adding, after operative paragraph 8, the following paragraph:

> "*Requests* the Secretary-General to submit to the General Assembly, in accordance with the established procedures, and bearing in mind its resolution 56/272, a report on the assistance currently provided to special rapporteurs and options regarding additional support of the work of special rapporteurs".

At the same meeting, the Committee adopted draft resolution A/C.6/63/L.20, as orally revised, without a vote.

(*d*) General Assembly

On 11 December 2008, the General Assembly, on the recommendation of the Sixth Committee, adopted resolution 63/123, entitled "Report of the International Law Commission on the work of its sixtieth session". The General Assembly expressed its appreciation for the work accomplished by the Commission at its sixtieth session, including the completion of the second reading of the draft articles on the law of transboundary aquifers under the topic "shared natural resources", and the completion of the first reading of the draft articles on the topic "Effects of armed conflicts on treaties". The Assembly further took note of the decision of the International Law Commission to include the topics "Treaties over time" and "The Most-Favoured-Nation clause" in its programme of work, and encouraged the Commission to continue to take cost-saving measures at its future sessions without prejudice to the efficiency of its work. The Assembly also requested the Commission to continue to pay special attention to indicating in its annual report, for each topic, any specific issues on which expressions of views by Governments, either in the Sixth Committee or in written form, would be of particular interest in providing effective guidance for the Commission in its work.

15. United Nations Commission on International Trade Law[345]

(a) United Nations Commission on International Trade Law[346]

The United Nations Commission on International Trade Law (UNCITRAL) held its forty-first session in New York from 16 June to 3 July 2008 and adopted its report on 3 July 2008.

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[344] See A/C.6/63/SR.16, 18 and 22.

[345] Detailed information and documents regarding the work of the Commission can be found on the Commission's website at http://www.uncitral.org.

[346] For the membership of the United Nations Commission on International Trade Law, see *Official Records of the General Assembly, Sixty-third session, Supplement No. 17* (A/63/17), chapter II, section B.

During the session, the Commission completed its work on the draft Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea[347] and recommended it to the General Assembly for consideration and adoption at its sixty-third session. The Commission noted that the Working Group III (Transport) devoted thirteen sessions, held from 2002 to 2008, to the preparation of the draft convention and observed that the harmonized rules governing door-to-door transport operations would reduce legal obstacles to the flow of international trade, promote trade among States, and significantly contribute to the development of international economic relations and the well-being of all peoples. The Commission noted broad participation of all States and interested organizations in the preparation of the draft convention at all sessions of the Working Group, and took note of comments[348] from Governments and intergovernmental organizations regarding the draft Convention compiled by the Secretariat.

The Commission also considered reports of Working Group I (Procurement) on its twelfth[349] and thirteenth[350] sessions, at which the Working Group continued its work on the elaboration of proposals for the revision of the Model Law on Procurement of Goods, Construction and Services.[351] At those sessions, the Working Group considered the drafting materials relating to framework agreements, suppliers' lists, electronic communications in procurement, publication of procurement-related information and abnormally low tenders, and the use of electronic reverse auctions in public procurement and suggested revisions to those materials. The Commission commended the Working Group and the Secretariat for the progress made in its work and for inclusion of novel procurement practices in the Model Law. The Working Group was invited to proceed expeditiously with the finalization and adoption of the revised Model Law, together with its Guide to Enactment, within a reasonable time.

The Commission commended Working Group II (Arbitration and Conciliation) on the progress made in revising the UNCITRAL Arbitration Rules based on reports of its forty-seventh[352] and forty-eighth[353] sessions. At its forty-eighth session, the Working Group discussed the extent to which the revised UNCITRAL Arbitration Rules should include more detailed provisions concerning investor-State dispute settlement or administered arbitration. After discussion, the Commission agreed that the work on investor-State arbitration should be addressed separately after completion of the revision of the UNCITRAL Arbitration Rules in their generic form. The Commission encouraged the Working Group to complete this work as soon as possible so that the revised Rules could be considered by the Commission at its forty-second session, in 2009. The Commission agreed on the importance of ensuring transparency in investor-State arbitration and requested the Secretariat to research and compile information on current practices. As regards future

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[347] *Ibid*., annex I.

[348] A/CN.9/658 and Add.1-14.

[349] A/CN.9/640.

[350] A/CN.9/648.

[351] *Official Records of the General Assembly, Forty-ninth Session, Supplement No. 17* (A/49/17 and Corr. 1), annex I.

[352] A/CN.9/641.

[353] A/CN.9/646.

work, the Commission recalled that the issue of arbitrability and online dispute resolution should be maintained on the Working Group's agenda.

The Commission noted the progress of Working Group V (Insolvency Law) regarding consideration of the treatment of enterprise groups in insolvency as reflected in the reports of its thirty-third[354] and thirty-fourth[355] sessions. The Commission also noted further progress with respect to compiling information on practical experience with negotiating and using cross-border insolvency agreements to facilitate cross-border insolvency proceedings.[356] The Commission decided that the compilation should be considered by the Working Group at its thirty-fifth session with a view of the Group's further recommendation to the forty-second session of the Commission.

The Commission took note of the report of Working Group VI (Security Interests) on the work of its thirteenth[357] session and commended the Working Group on the progress made, which enabled it to request the Secretariat to prepare a first draft of the annex to the Guide dealing with security rights in intellectual property.[358] The Commission noted that the Working Group was not able to agree as to whether matters related to the impact of insolvency on a security right in intellectual property were sufficiently linked with secured transactions law so as to justify their discussion in the annex to the Guide. The Commission decided that Working Group V should be invited to provide a preliminary view on those matters at its next session.

In the context of the ongoing project to monitor the legislative implementation of the 1958 New York Convention,[359] the Commission considered a written report[360] on the implementation, interpretation and application of the New York Convention by States, based on replies submitted by 108 States parties to the New York Convention. It agreed that work should be undertaken to limit the risk of divergence from the spirit of the Convention and to eliminate uncertainties resulting from its imperfect or partial implementation. The Commission requested the Secretariat to study the feasibility of preparing a guide to enactment of the New York Convention, which would promote a uniform interpretation and application of the Convention. After discussion of the recommendation adopted by the Commission at its thirty-ninth session regarding the interpretation of article II, paragraph 2, and article VII, paragraph 1 of the New York Convention and circulated to States for comment, the Commission agreed that any further comments received by the Secretariat from States on the recommendation be made part of the project. The Commission also took note with appreciation of conferences celebrating the fiftieth anniversary of the New York Convention, and requested the Secretariat to continue monitoring such events and encouraged it to participate actively in initiatives for the promotion of the Convention.

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[354] A/CN.9/643.

[355] A/CN.9/647.

[356] A/CN.9/654.

[357] A/CN.9/649.

[358] *Ibid*, para.13.

[359] Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958. United Nations, *Treaty Series* , vol. 330, p. 3.

[360] A/CN.9/656 and Add.1.

The Commission also considered a note[361] by the Secretariat on rules of procedure and methods of work describing current practices of the Commission as regards decision-making, the status of observers in UNCITRAL and the preparatory work undertaken by the Secretariat, and a note[362] compiling comments by States received prior to the forty-first session. After a discussion, the Commission requested the Secretariat to prepare a draft of a reference document, based on the note by the Secretariat, of a normative nature for use by chairpersons, delegates and observers and by the Secretariat itself. The Secretariat was requested to circulate the draft for comments by States and interested international organizations and to prepare a compilation of those comments for consideration by the Commission at its forty-second session.

With regard to case-law on UNCITRAL texts (CLOUT) and digests of case-law, the Commission noted that as of 8 April 2008, 726 issues of compiled case-law abstracts from the CLOUT system had been prepared for publication, dealing with 761 cases, relating mainly to the United Nations Sales Convention[363] and the UNCITRAL Model Law on International Commercial Arbitration, and including some cases on the UNCITRAL Model Law on Cross-Border Insolvency.

(*b*) Future work

In the area of electronic commerce, the Commission considered a note[364] by the Secretariat presenting policy considerations and legal issues in the implementation and operation of single windows and proposing possible future work in cooperation with other international organizations. The Secretariat was advised to study the legal aspects involved in implementing a cross-border single window facility with a view to formulating a comprehensive international reference document, and to keep under examination legal issues related to electronic equivalents to negotiable documents and other electronic systems for the negotiation and transfer of rights in goods, securities and other rights in electronic form. The Commission requested the Secretariat to engage actively, in cooperation with World Customs Organization and with experts, in the single window project and to report to the Commission on the progress of that work at its next session.

As regards work in the area of commercial fraud, the Commission considered the comments[365] of States and organizations submitted to the Secretariat on the text of the indicators of commercial fraud circulated to States.[366] Given the technical nature of the comments received, the Secretariat was requested to improve the text and to publish it as a Secretariat informational note for educational purposes and fraud prevention. The Commission agreed that the text could form a part of a broader technical assistance work, including dissemination and explanation to Governments and international organizations. The Commission left the question of future work in the area to be considered by

[361] A/CN.9/653.

[362] A/CN.9/660 and Add.1-4.

[363] United Nations Convention on Contracts for the International Sales of Goods, 1980. United Nations, *Treaty Series*, vol. 1489, p. 3.

[364] A/CN.9/655.

[365] A/CN.9/659 and Add.1 and 2.

[366] A/CN.9/624 and Add.1 and 2.

the Secretariat, enabling it to make appropriate recommendations to the Commission at future sessions. The Commission requested the Secretariat to continue to cooperate with and assist the United Nations Office on Drugs and Crime with respect to commercial and economic fraud and to report to the Commission on the progress of that work.

(*c*) General Assembly

At its sixty-third session, the General Assembly, on the recommendation of the Sixth Committee, adopted resolution 63/120 of 11 December 2008, in which it took note of the report of the Commission on the work of its resumed fortieth and its forty-first sessions, commended the Commission for the completion and approval of the Legislative Guide on Secured Transactions[367] and for the completion and approval of the draft Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea. It welcomed the progress made in its work on procurement, insolvency law, arbitration, and electronic commerce, 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.

On 11 December 2008, the General Assembly adopted, on the recommendation of the Sixth Committee, resolution 63/122, in which it adopted the United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea and authorized a ceremony for the opening for signature to be held on 23 September 2009 in Rotterdam, the Netherlands. It also recommended that the rules embodied in the Convention be known as the "Rotterdam Rules".

16. Legal questions dealt with by the Sixth Committee and other related subsidiary bodies of the General Assembly

During the sixty-third 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 in 2008.[368] The resolutions of the General Assembly referred to in this section were all adopted on 11 December 2008 on the recommendation of the Sixth Committee.[369]

[367] See also General Assembly resolution 63/121 of 11 December 2008.

[368] For further information and documents regarding the work of the Sixth Committee and the other related subsidiary organs of the General Assembly mentioned in this section, see http://www.un.org/ga/sixth/63/index.shtml.

[369] 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 on the various agenda items. The Sixth Committee reports also contain information concerning the relevant documentation on the consideration of the items by the Sixth Committee.

(*a*) Nationality of natural persons in relation to the succession of States

At its fifty-fourth session, in 1999, the General Assembly, having considered chapter IV of the report of the International Law Commission[370] which contained a set of draft articles on nationality of natural persons in relation to the succession of States, decided in resolution 54/112 to include the item on the agenda of its fifty-fifth session. The following year, the Assembly adopted resolution 55/153, to which the same draft articles were annexed, in which it invited Governments to submit comments and observations with a view to considering the elaboration of a convention on the topic at a future session. It further decided to include the item in the provisional agenda of its fifty-ninth session, in 2004. At that session, the General Assembly adopted resolution 59/34, in which it invited Governments to submit comments concerning the advisability of elaborating a legal instrument on the question of nationality of natural person in relation to the succession of States, including the avoidance of statelessness as a result of the succession of States, and decided to include the item in the provisional agenda of its sixty-third session.

(i) *Sixth Committee*

The Sixth Committee considered the item at its 11th, 25th and 26th meetings, on 21 October, and on 5 and 14 November 2008, respectively.

During the debate on this item, delegations expressed their support for the draft articles on "Nationality of natural persons in relation to the succession of States", adopted by the International Law Commission in 2001. They stressed the importance of the right to a nationality, as recognised in several international legal instruments, as well as the need to avoid statelessness following the succession of States. Some delegations also underlined the principle of non-discrimination in dealing with nationality issues in the context of State succession. With regard to the outcome of the draft articles, some delegations favoured their adoption by the General Assembly in the form of a declaration, arguing that a non-binding instrument would provide guidance to States in establishing domestic legislation on nationality, while respecting their sovereignty in determining the conditions of attribution of nationality. Other delegations expressed their preference for a convention. It was also proposed that the possibility of elaborating a convention be considered at a later session of the General Assembly. In addition, the view was expressed that further analysis of State practice was needed in order to ensure that the draft articles better reflect contemporary international standards.

At the 25th meeting, on 5 November, the representative of the Democratic Republic of the Congo, on behalf of the Bureau of the Sixth Committee, introduced a draft resolution entitled "Nationality of natural persons in relation to the succession of States",[371] which was adopted at the same meeting without a vote.[372]

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[370] A/54/10 and Corr.1 and 2.

[371] A/C.6/63/L.14.

[372] For the report of the Sixth Committee on this item, see A/63/346. For the summary records, see A/C.6/63/SR.11, 25 and 26.

(ii) *General Assembly*

In its resolution 63/118 adopted without a vote, the General Assembly took into consideration the comments and observations of Governments[373] and the discussion held in the Sixth Committee at the fifty-ninth and sixty-third sessions of the General Assembly[374] on the question of nationality of natural persons in relation to the succession of States. The Assembly reiterated its invitation to Governments to take into account the provisions of the articles contained in the annex to General Assembly resolution 55/153, in dealing with issues of nationality of natural persons in relation to the succession of States, and encouraged States to consider at the regional or subregional levels, the elaboration of legal instruments regulating questions of nationality of natural persons in relation to the succession of States. In addition, Governments were invited to submit comments concerning the advisability of elaborating a legal instrument on the question. The Assembly further decided to include this item in the provisional agenda of its sixty-sixth session.

(*b*) Criminal accountability of United Nations officials and experts on mission

The item entitled "Comprehensive review of the whole question of peacekeeping operations in all their aspects" was included in the agenda of the General Assembly at its nineteenth session, in February 1965, when the General Assembly established the Special Committee on Peacekeeping Operations that was to undertake a comprehensive review of the whole question of peacekeeping operations in all their aspects.[375]

At its sixty-first session, 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 discussion 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,[376] submitted pursuant to Assembly resolutions 59/300 and 60/263 and decision 60/563.[377]

At the same session, the General Assembly decided to establish an *Ad Hoc* Committee[378] for the purpose of considering the report of the Group of Legal Experts, in particular its legal aspects.

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[373] For the comments and observations of Governments on this item, see A/59/180 and Add.1 and 2; and A/63/113.

[374] *Official Records of the General Assembly, Fifty-ninth Session, Sixth Committee,* 15th meeting (A/C.6/59/SR.15 and Corr.1); and *ibid., Sixty-third Session, Sixth Committee*, 11th meeting (A/C.6/63/SR.11 and Corr.1).

[375] General Assembly resolution 2006 (XIX) of 18 February 1965.

[376] For more information, see note by Secretary-General, A/60/980.

[377] General Assembly decision 61/503 A of 13 September 2006.

[378] The Ad Hoc Committee on criminal accountability of United Nations officials and experts on mission was established by General Assembly resolution 61/29 of 4 December 2006.

(i) Ad Hoc *Committee on Criminal Accountability of the United Nations Officials and Experts on Mission*

The Ad Hoc Committee on Criminal Accountability of United Nations Officials and Experts on Mission held its second session at United Nations Headquarters from 7 to 9 and on 11 April 2008. The Committee adopted its work programme at its third meeting, held on 7 April 2008, and decided to proceed with its discussions in the context of a working group of the whole. The Committee also held a general exchange of views, during which delegations made statements.[379]

(ii) *Sixth Committee*

The Sixth Committee considered the item at its 5th, 14th, 19th, and 26th meetings, on 10, 24 and 29 October and 14 November 2008, respectively.

At the 5th meeting, on 10 October 2008, 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.[380] 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 14, 15 and 17 October, and on 24 October, the Chairperson of the Working Group presented an oral report to the Sixth Committee.[381]

During the debate, delegations reiterated their support for the zero tolerance policy of the Organization concerning criminal conduct, particularly that involving sexual abuse and exploitation, committed by United Nations officials or experts on mission. The point was made that the United Nations system must exemplify the rule of law principles that it sought to foster. Reference was also made to the need to keep in mind similar efforts being undertaken in other parts of the Organization, as well as the impact of the ongoing reform of the internal administration of justice system. Specific issues identified for further deliberation included: the scope of the topic; criminal investigations; the provision of evidence and its assessment in administrative *versus* criminal procedures; strengthening cooperation and the sharing of information; extradition; servicing of sentences; and other judicial assistance mechanisms. The importance of respecting the territorial jurisdiction of the host State was reiterated.

Several delegations expressed support for the proposal to consider, in the long term, the negotiation of an international convention, while others maintained that it was still premature to contemplate such an instrument. Several speakers expressed support for the combined approach of taking both short and long-term measures.[382] In the short term, those States which had not already done so were encouraged to extend their respective national criminal jurisdiction to cover criminal activity committed by their nationals employed

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[379] A summary of the debate is contained in the report of the *Ad Hoc* Committee on Criminal Accountability of United Nations officials and experts on mission, A/63/54, section III, p. 4.

[380] For the report of the Ad Hoc Committee on Criminal Accountability of United Nations officials and experts on mission, see A/63/54.

[381] A/C.6/63/SR.14.

[382] As per General Assembly resolution 62/63.

by the United Nations or serving as experts on mission. It was observed that ‚since many States had already extended such jurisdiction, the possible future treaty could focus exclusively on cooperation and leave the question of jurisdiction to a separate draft model law. During the debate, support was also expressed for the comprehensive strategy on assistance and support to victims of sexual exploitation and abuse by United Nations staff and related personnel.[383]

At the 19th meeting, on 29 October 2008, the representative of Greece, on behalf of the Bureau, introduced a draft resolution entitled "Criminal accountability of United Nations officials and experts on mission".[384] At its 28th meeting, on 19 November, the Secretary of the Committee made a statement regarding the financial implications of the draft resolution. At its 26th meeting, on 14 November, the Committee adopted the draft resolution without a vote.[385]

(iii) *General Assembly*

At its sixty-seventh meeting, on 11 December 2008, the General Assembly adopted without a vote resolution 63/119, in which it emphasized the need to enhance international cooperation to ensure the criminal accountability of United Nations officials and experts on mission. The 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. States were encouraged, *inter alia*, to afford each other assistance in connection with criminal investigations or criminal or extradition proceedings in respect of crimes of a serious nature committed by United Nations officials or experts on mission, including assistance in obtaining evidence at their disposal in accordance with their domestic law or any treaties or other arrangements on extradition and mutual legal assistance that may exist between them. States were further encouraged to explore ways and means of facilitating the possible use of information and material obtained from the United Nations for purposes of criminal proceedings initiated in their territory for the prosecution of crimes of a serious nature committed by United Nations officials and experts on mission, bearing in mind due process considerations, and to also provide effective protection for victims of, witnesses to, and others who provide information in relation to, crimes of a serious nature alleged to have been committed by United Nations officials and experts on mission.

Furthermore, the General Assembly requested the Secretary-General to prepare a report to be submitted at the sixty-fourth session on the implementation of the said resolution, and on the number and types of credible allegations and any actions taken by the United Nations and its Member States regarding crimes of a serious nature committed by

[383] Adopted by the General Assembly in resolution 62/214.

[384] A/C.6/63/L.10.

[385] For the report of the Sixth Committee, see A/63/437. For the summary records, see A/C.6/63/SR.5, 14, 19 and 26.

United Nations officials and experts on mission. Finally, the Assembly decided to include the topic on the provisional agenda of its sixty-fourth session.

(*c*) Status of Protocols[386] Additional to the Geneva Conventions of 1949 and Relating to the Protection of Victims of Armed Conflicts

This item was included in the agenda of the thirty-seventh session of the General Assembly, in 1982, at the request of Denmark, Finland, Norway and Sweden.[387]

(i) *Sixth Committee*

The Sixth Committee considered the item at its 13th, 14th and 26th meetings, on 23 and 24 October and 14 November 2008, respectively.[388]

During the debate, delegations recalled the importance of the Geneva Conventions and the Protocols Additional thereto and stressed the need for those States that had not already done so to ratify the Protocols as well as the Rome Statute of the International Criminal Court[389] and other relevant instruments. Some delegations encouraged States to accept the competence of the International Fact-Finding Commission, pursuant to Article 90 of the First Additional Protocol. Some speakers welcomed the adoption of the third protocol additional to the Geneva Conventions, relating to the adoption of an additional emblem.[390] The adoption in 2008 of the convention on Cluster Munitions[391] was noted by some delegations. Concern was expressed over the increasing numbers of civilians being targeted in armed conflicts and the need to apply international humanitarian law was stressed.

Delegations commended the International Committee of the Red Cross (ICRC) on its role in the promotion of international humanitarian law and monitoring compliance with it. While some delegations noted with interest the ICRC study on customary international humanitarian law, a view stressing concern about its methodology, and in particular, its conclusion that certain rules contained in the Additional Protocols had become customary international law for all States, was also expressed. Some delegations welcomed the 2008 Montreux Document[392] elaborated under the leadership of Switzerland and the ICRC to clarify legal obligations and to define good practices relevant to private military and security companies operating in an armed conflict.

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[386] United Nations, *Treaty Series*, vol. 1125, p. 3 and United Nations, *Treaty Series*, vol. 1125, p. 609.

[387] General Assembly decision A/37/142.

[388] For the report of the Sixth Committee on this item, see 63/440. For the summary records, see A/C.6/63/SR.13, 14 and 26.

[389] United Nations, *Treaty Series*, vol. 2187, p. 3.

[390] Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the adoption of an additional distinctive emblem (Protocol III). United Nations, *Treaty Series,* vol. 2404, p. 19.

[391] For the text of the Convention, see chapter IV of this publication.

[392] Montreux Document on Pertinent International Legal Obligations and Good Practices for States related to Operations of Private Military and Security Companies during Armed Conflict. For more information and the full text of the Montreux Document, see the website of the ICRC, www.icrc.org.

At the 26th meeting, on 14 November, the representative of Sweden introduced a draft resolution entitled "Status of the Protocols Additional to the Geneva Conventions of 1949 and relating to the protection of victims of armed conflicts",[393] which was adopted at the same meeting without a vote.

(ii) *General Assembly*

In its resolution 63/125 adopted without a vote, the General Assembly, having considered the report of the Secretary-General on the item,[394] noted the adoption of the Convention on Cluster Munitions in Dublin on 30 May 2008, and the entry into force of the 2005 Protocol relating to the adoption of the additional protocol concerning the adoption of a distinctive emblem (Protocol III). The Assembly called upon States to consider becoming parties to the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict,[395] and called upon all States parties to the Protocols Additional to the Geneva Conventions to ensure their wide dissemination and full implementation. The Assembly further requested the Secretary-General to submit to the General Assembly at its sixty-fifth session a report on the status of the Additional Protocols relating to the protection of victims of armed conflicts, as well as on measures taken to strengthen the existing body of international humanitarian law, *inter alia*, with respect to its dissemination and full implementation at the national level, based on information received from Member States and the ICRC.

(*d*) Consideration of effective measures to enhance the protection, security and safety of diplomatic and consular missions and representatives

This item was included in the agenda of the thirty-fifth session of the General Assembly in 1980, at the request of Denmark, Finland, Iceland, Norway and Sweden.[396] The General Assembly considered the item annually at its thirty-sixth to forty-third sessions, and biannually thereafter.

(i) *Sixth Committee*

The Sixth Committee considered the item at its 14th, 25th and 26th meetings, on 24 October and 5 and 14 November 2008, respectively.[397]

During the debate, delegations welcomed the Secretary-General's report on the topic.[398] They voiced their concern and condemned the continuing acts of violence against the security and safety of diplomatic and consular missions and their representatives, and urged States to respect their obligations under international law and to take all the necessary measures in

[393] A/C.6/63/L.15.

[394] For the report of the Secretary-General, see A/63/118 and Corr.1 and Add.1

[395] United Nations, *Treaty Series*, vol. 2173, p. 222.

[396] General Assembly decision A/35/142.

[397] For the report of the Sixth Committee on this item, see A/63/441. For the summary records, see A/C.6/63/SR.14, 25 and 26.

[398] A/63/121.

order to protect the diplomatic and consular missions and representatives within their territories. Some delegations urged States to comply with relevant reporting procedures. Some speakers also stressed that the breaches by States of their obligations under the Vienna Conventions on Diplomatic[399] and Consular[400] Relations entailed an obligation to make reparation or to take other remedial action. The need and responsibility to take preventive measures was emphasized by some delegations.

At the 25th meeting, on 5 November, the representative of Finland introduced a draft resolution entitled "Consideration of effective measures to enhance the protection, security and safety of diplomatic and consular missions and representatives", which was adopted by the Committee, without a vote, at its 26th meeting, on 14 November.[401]

(ii) *General Assembly*

In its resolution 63/126 adopted without a vote, the General Assembly took note of the report of the Secretary-General on the item,[402] and strongly condemned all acts of violence against diplomatic and consular missions and representatives, as well as against missions and representatives of international intergovernmental organizations and officials of such organizations. States were urged to strictly observe, implement and enforce the applicable principles and rules of international law governing diplomatic and consular relations, including during a period of armed conflict, and to ensure the protection, security and safety of the missions and representatives present officially in territories under their jurisdiction, as well as to prevent any acts of violence against them. Furthermore, the Assembly urged States to ensure, with the participation of the United Nations, that such acts would be fully investigated with a view to bringing offenders to justice. The Assembly requested all States to report to the Secretary-General as promptly as possible, serious violations of the protection, security and safety of diplomatic and consular missions and representatives, as well as missions and representatives with diplomatic status to international intergovernmental organizations. Further, the State in which the violation took place — and, to the extent possible, the State where the alleged offender was present — was requested to report to the Secretary-General as promptly as possible on measures taken to bring the offender to justice and to eventually communicate the final outcome of the proceedings. The Secretary-General was requested to submit to the General Assembly at its sixty-fifth session a report containing information on the state of ratification of the instruments relevant to the protection, security and safety of diplomatic and consular missions and representatives, and a summary of reports received from, and views expressed by, Member States. The Secretary-General was further invited to include in his report any views he may wish to express on these matters.

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[399] United Nations, *Treaty Series*, vol. 500, p. 95.

[400] United Nations *Treaty Series*, vol. 596, p. 261.

[401] A/C.6/63/L.12.

[402] For the report of the Secretary-General, see A/63/121 and Add.1 and Add.1/Corr.1.

(*e*) Report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization

(i) *Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization*

At its twenty-ninth session, in 1974, the General Assembly decided to establish an *Ad Hoc* Committee on the Charter of the United Nations to consider any specific 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.[403] 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.[404] Since its thirtieth session, the General Assembly has reconvened the Special Committee every year.

The Special Committee met at United Nations Headquarters from 27 to 29 February and on 3 to 5 and 7 March 2008. At its 254th meeting, on 7 March 2008, the Special Committee adopted the report of its 2008 session.[405]

The Special Committee reported, among other things, on its consideration of the revised working paper submitted by the Russian Federation entitled "Basic conditions and standard criteria for the introduction and implementation of sanctions imposed by the United Nations". According to the report, the new text was aimed at enhancing the effectiveness of sanctions by providing practical recommendations. The sponsor delegation recommended, *inter alia*, that sanctions should be imposed by the Security Council in accordance with its powers under Chapter VII of the Charter only after the exhaustion of all peaceful means of settlement and should be balanced; that these sanctions should provide for clear objectives, conditions and time frame for introducing and lifting them and be subjected to periodic review. In addition, according to the revised working paper, the sanctions should aim at modifying the behaviour of the target State, be based on the assessment of their possible adverse impact on third States or civilian populations, so as to minimize or avoid such an impact, and should not lead to any retribution or human rights violations. Furthermore, it was stated that sanctions should not be aimed at changing political regimes and that they should not be applied "preventively" in instances of mere violation of international law, norms or standards. The Special Committee also reported that, during the debates on the working paper, it was suggested that the International Law Commission consider the issue of the legal consequences of the imposition of unlawful sanctions. The Committee further related the concern expressed by some delegations over the imposition of unilateral sanctions in violation of the Charter. It also reported on the need to improve sanctions regimes and to strengthen the role of the General Assembly and

[403] General Assembly resolution 3349 (XXIX) of 17 December 1974.

[404] General Assembly resolution 3499 (XXX) of 15 December 1975.

[405] See *Officials records of the General Assembly, Sixty-third Session, Supplement No. 33* (A/63/33).

the Economic and Social Council in relation to sanctions. The text of the revised proposal, as it emerged from informal consultations, submitted by the delegation of the Russian Federation for inclusion in the 2008 report of the Special Committee, was reproduced as an annex to the report of the Special Committee.

The Committee also reported on the general exchange of views on the question of the implementation of the provisions of the Charter relating to assistance to third States affected by sanctions. According to the report of the Committee, there were contradictory views on the consequences of targeted sanctions on third States. On one hand, some delegations argued that the use of targeted sanctions preserved the effectiveness of sanctions while minimizing their unintended consequences; on the other hand, other delegations stated that even targeted sanctions could entail unintended negative effects for third States and, therefore, recommended that the Special Committee remain seized of the matter with the aim of establishing a comprehensive and objective framework which would allow for broad-based adaptation of sanctions and mitigate their adverse effects on third States and civilian populations. The Committee also reported on discussions on the usefulness of actively considering the establishment of a fund, financed from assessed contributions or other United Nations-based financial arrangements, to minimize the losses incurred as a consequence of the application of sanctions; those discussions led to the notice that such costs should be considered through appropriate mechanisms, such as the international financial institutions. Furthermore, during the meetings, it was suggested that any reform of the Charter of the United Nations should include a mandate for the Economic and Social Council to undertake studies relating to the socio-economic and humanitarian effects of sanctions, prior to their application.

During the meetings, the consideration of the working paper submitted by the Russian Federation entitled "Fundamentals of the legal basis for United Nations peacekeeping operations in the context of Chapter VI of the Charter of the United Nations" by the Special Committee was completed; therefore, at its 254th meeting, on 7 March 2008, the Special Committee decided not to keep this topic on its agenda.

The Special Committee, reporting on the general exchange of views of delegations that considered the item entitled "Peaceful settlement of disputes", related the emphasis by delegations on peaceful settlement of disputes as a basic principle of international law enshrined in Article 2, paragraph 3, of the Charter. The delegations also referred to the important role and record of the International Court of Justice in the judicial settlement of disputes.

(ii) *Sixth Committee*

The Sixth Committee considered the item at its 12th, 13th and 26th meetings, on 22 and 23 October and 14 November 2008, respectively.[406] At the 12th meeting, on 22 October, 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.[407]

[406] For the report of the Sixth Committee, see A/63/442. For the summary records, see A/C.6/63/SR.12, 13 and 26.

[407] A/63/33.

At the 26th meeting, on 14 November, 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". At the same meeting, the Committee adopted the draft resolution without a vote.[408]

(iii) *General Assembly*

In its resolution 63/127, entitled "Report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization", the General Assembly took note of the report of the Special Committee and of the report of the Secretary-General on the *Repertory* and the *Repertoire*.[409]

In the same resolution, the Assembly requested the Special Committee to continue, during its next session in 2009, its consideration of all proposals concerning the question of the maintenance of international peace and security in all its aspects in order to strengthen the role of the Organization, and, 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. It further requested the Special Committee to keep on its agenda the question of the peaceful settlement of disputes between States, and to continue to consider, on a priority basis, ways and means of improving its working methods and enhancing its efficiency with a view to identifying widely acceptable measures for future implementation. Furthermore, the Special Committee was invited by the Assembly to continue to identify new subjects for consideration in its future work with the view to contributing to the revitalization of the work of the United Nations. In the resolution, the General Assembly noted with appreciation the contributions made by Member States to the trust fund for the *Repertoire* and the *Repertory*, and reiterated its call for voluntary contributions to both trust funds, as well as the sponsoring, on a voluntary basis, and with no cost to the United Nations, of associate experts to assist in the updating of the two publications. It further called upon the Secretary-General to continue his efforts towards updating the two publications and making them available electronically in all their respective language versions.

(*f*) The rule of law at the national and international levels

This item was included in the provisional agenda of the sixty-first session of the General Assembly at the request of Liechtenstein and Mexico.[410]

At the same session, the General Assembly requested, among other things, 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.

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[408] A/C.6/63/L.19.

[409] A/63/98.

[410] A/61/142.

(i) *Sixth Committee*

The Sixth Committee considered the item at its 6th, 7th, 8th and 26th meetings, on 13 and 14 October and on 14 November 2008, respectively.[411]

During the debate, delegations reiterated their strong commitment to the promotion of the rule of law, which was at the centre of the United Nations efforts in the field and needed to be articulated with the guarantees for human rights, development goals and support for democratization. Several delegations emphasized the importance of the promotion of the rule of law at the national level and indicated that technical assistance by the United Nations and other external actors should be provided at the request of the recipient State, with a view to further enhancing national ownership. The view was expressed that the promotion of the rule of law at the international level needed to be considered as complementary to activities performed at the national level. On the international plane, delegations put emphasis on the codification and progressive development of international law as well as on issues relating to the adoption and implementation of treaties and to the pacific settlement of disputes, in particular by encouraging resort to the International Court of Justice. Some delegations also mentioned efforts made to enhance the dissemination and teaching of international law. In this regard, reference was made to the need to make a better use of electronic resources, as exemplified by the launch of the United Nations Audiovisual Library of International Law.

Several delegations mentioned the need to pay particular attention to the promotion of the rule of law at the institutional level. According to these views, the functions and mandates of the General Assembly should not be infringed upon by other organs and should be respected by Member States. Mention was specifically made of decisions of the Security Council. The view was expressed that the Security Council should pay particular attention to the requirements of the rule of law in the context of the activities of its Sanctions Committees. Delegations also welcomed the inventory of the current activities performed system-wide by the United Nations for the promotion of the rule of law at the national and international levels[412] and the report aimed at identifying ways and means for strengthening and coordinating the activities listed in the inventory.[413]

At the 26th meeting, on 14 November 2008, the representative of Mexico, on behalf of the Bureau, introduced a draft resolution entitled "The rule of law at the national and international levels".[414] After the Secretary of the Committee made a statement regarding its financial implications, the draft resolution was adopted at the same meeting without a vote. Following the adoption of the draft resolution, the Committee agreed that the understanding reached in connection with operative paragraph 10 of the draft resolution would be issued in a note by the Chairman.[415]

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[411] For the report of the Sixth Committee, see A/63/443. For the summary records, see A/C.6/63/SR.6, 7, 8 and 26.

[412] A/63/64.

[413] A/63/226.

[414] A/C.6/63/L.17.

[415] Note by the Chairman, A/C.6/63/L.23.

(ii) *General Assembly*

On 11 December 2008, the General Assembly adopted, without a vote, resolution 63/128, in which it noted with appreciation the inventory of current rule of law activities of the United Nations submitted by the Secretary-General and the report of the Secretary-General on strengthening and coordinating United Nations rule of law activities.[416] In addition, the General Assembly expressed full support for the overall coordination and coherence role of the Rule of Law Coordination and Resource Group within the United Nations system within existing mandates, supported by the Rule of Law Unit in the Executive Office of the Secretary-General, under the leadership of the Deputy Secretary-General. At the same time, it also requested the Secretary-General to submit an annual report on United Nations rule of law activities, in particular the work of the Group and the Unit, with special regard to the improvement of the coordination, coherence and effectiveness of rule of law activities, taking note of the elements set out in paragraphs 77 and 78 of the report of the Secretary-General. Furthermore, the Assembly invited the International Court of Justice, the United Nations Commission on International Trade Law and the International Law Commission to continue to comment, in their respective reports to the General Assembly, on their current roles in promoting the rule of law, and it also invited the Rule of Law Coordination and Resource Group and the Rule of Law Unit to interact with Member States.

(*g*) Measures to eliminate international terrorism

The item "Measures to eliminate international terrorism" was included in the agenda of the twenty-seventh session of the General Assembly, in 1972, further to an initiative of the Secretary-General.[417]

(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, by 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 2008, the *Ad Hoc* Committee held its 40th and 41st meetings on 25 February and on 6 March 2008, respectively.[418] Informal consultations were held from 25 February to 5 March. Informal summaries of the consultations can be found, for reference purposes only, in the annexes to the report of the *Ad Hoc* Committee.

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[416] A/63/226.

[417] A/8791 and Add.1 and Add.1/Corr.1.

[418] For the report of the *Ad Hoc* Committee, see *Official Records of the General Assembly, Sixty-third Session, Supplement No. 37* (A/63/37).

At its 41st meeting, the *Ad Hoc* Committee decided to recommend that the Sixth Committee, at the sixty-third session of the General Assembly, establish a working group with a view to finalizing the draft comprehensive convention on international terrorism and continue to discuss the item, included in its agenda by General Assembly resolution 54/110, concerning the question of convening a high-level conference under the auspices of the United Nations.

(ii) *Sixth Committee*

The Sixth Committee considered this item at its 2nd, 3rd, 4th, 14th and 26th meetings, on 8, 9 and 24 October and 14 November 2008, respectively.[419]

At its 1st meeting, on 6 October, the Sixth Committee established a Working Group to continue to carry out the mandate of the *Ad Hoc* Committee established by General Assembly resolution 51/210. The Working Group held two meetings, on 9 and 16 October. Informal consultations were also held on the resolution on this item.

During the debate, delegations reaffirmed their strong condemnation of terrorism in all its forms and manifestations, and recalled that it remains a major threat to international peace and security. They emphasized the transnational dimension of the phenomenon requiring a global response of the international community, which should be coordinated at the regional and international levels. Delegations further observed that terrorism should not be associated with any culture or religion. The necessity to encourage dialogue among civilizations and religions as an integral part of the fight against terrorism was stressed and, in this regard, the role of the media and the civil society was emphasized.

Several delegations stressed that counter-terrorism measures must be in conformity with the Charter of the United Nations, international law, and in particular human rights, refugee and humanitarian law. Some speakers stressed that the right of peoples to self-determination and to fight against foreign occupation should also be respected and clearly differentiated from terrorist acts. Some delegations also recalled the necessity of addressing the conditions conducive to terrorism, as well as other crimes used to finance terrorism, such as drug trafficking.

Delegations reiterated their support for the United Nations Global Counter-Terrorism Strategy and viewed it as a key achievement in the coordination of the action of the international community against terrorism. It was stressed that the Strategy should be fully implemented by Member States without selectivity. The first review on the implementation of the Strategy in September 2008 was generally welcomed. Delegations further expressed their appreciation for the institutionalization by the Secretary-General of the Counter-Terrorism Implementation Task Force, which they hoped would enhance coordination among various units of the Organization.

At the 26th meeting, on 14 November 2008, the representative of Canada, on behalf of the Bureau, introduced a draft resolution entitled "Measures to eliminate international terrorism".[420] At the same meeting, the Secretary of the Committee made a statement

[419] For the report of the Sixth Committee on this item, see A/63/444. For the summary records, see A/C.6/63/SR.2-4, 14 and 26.

[420] A/C.6/63/L.11.

regarding the financial implications of the draft resolution, and the Committee adopted this draft resolution without a vote.

(iii) *General Assembly*

In its resolution 63/129 entitled "Measures to eliminate international terrorism" adopted without a vote, the General Assembly 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 furthermore decided that the *Ad Hoc* Committee should, on an expedited basis, continue to elaborate the draft comprehensive convention on international terrorism, and should continue to discuss the item included in its agenda concerning the question of convening a high-level conference under the auspices of the United Nations.

(*h*) Revitalization of the work of the General Assembly

The item "Revitalization of the work of the General Assembly" was first considered by the General Assembly at its forty-sixth session.[421]

(i) *Ad Hoc Working Group*

At its resumed sixty-second session, on 2 August 2007, the General Assembly adopted resolution 61/292, by which it decided to establish an *Ad hoc* Working Group open to all Member States to evaluate and assess the status of implementation of relevant resolutions, to identify ways to further enhance the role, authority, effectiveness and efficiency of the Assembly, *inter alia*, by building on previous resolutions, and to submit a report thereon to the Assembly.

In 2008, the Working Group held seven meetings on 21 February, 30 May, 19 and 24 June, 21 and 31 July and 11 September 2008. At its 1st meeting, on 21 February, the Working Group held a general discussion on the revitalization of the General Assembly.[422]

During the review that followed, Member States underlined that the best way to revitalize the General Assembly was to ensure implementation of previous resolutions on the matter. At the same time, it was indicated that a large number of provisions on revitalization had already been implemented in a satisfactory manner. Some delegations noted, in this context, that in order to make a fair assessment of the progress achieved so far, a parallel should be drawn between the quantity of provisions implemented and their quality. Some argued that it was important to analyse the reasons for the lack of implementation of resolutions before engaging in the identification of ways to strengthen the Assembly. In that context, a recommendation was made that the Secretary-General should continue to report on the implementation of resolutions on revitalization. In addition, several delegations underlined that the General Assembly should continue to engage actively in priority

[421] General Assembly resolution 46/77 of 12 December 1991.

[422] For the report of the Working Group, see A/62/952.

areas, including peace and security, the new peacebuilding architecture, development and the Millennium Development Goals, and to discuss current issues of major relevance. Some delegations underlined the need for an analysis on how the ongoing considerations on Security Council reform, system-wide coherence and mandate review could contribute to revitalization. Furthermore, delegations underscored the lack of balance among and between the principal organs and indicated that it was essential to re-establish the balance between the main bodies of the Organization, as set out in the Charter of the United Nations. During the debate, delegations also noted that the provisions relating to the selection of the Secretary-General were the least implemented provisions of the overall revitalization efforts and expressed the opinion that the procedures for selection of the Secretary-General should be considered well before the start of the next selection process.

The *Ad Hoc* Working Group adopted its report on 11 September, and transmitted it to the General Assembly for consideration.

(ii) *Sixth Committee*

On its 2nd plenary meeting, on 19 September 2008, the General Assembly decided to allocate the agenda item to all the Main Committees for the sole purpose of considering and taking action on their respective tentative programmes of work for the sixty-fourth session of the General Assembly. The Sixth Committee considered the item at its 26th meeting, on 14 November 2008.[423] On the same day, the Chairman introduced the draft decision on the provisional programme of work for the sixty-fourth session of the General Assembly as proposed by the Bureau, which was adopted at the same meeting.[424]

(iii) *General Assembly*

On 15 September 2008, the General Assembly adopted, without reference to a Main Committee, resolution 62/276, by which it decided to establish, at its sixty-third session, an *ad hoc* working group to identify further ways to enhance the role, authority, effectiveness and efficiency of the Assembly, *inter alia*, by building on previous resolutions, and to report thereon to the Assembly at its sixty-third session.

(*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.

In its resolution 61/261 of 4 April 2007, the General Assembly decided to continue the consideration of this item during its sixty-second session as a matter of priority with the objective of implementing the new system of administration of justice no later than January 2009. The Assembly also invited the Sixth Committee to consider the legal aspects of the reports to be submitted by the Secretary-General without prejudice to the role of the

[423] For the summary records, see A/C.6/63/SR.26.

[424] A/C.6/63/L.16.

Fifth Committee as the Main Committee entrusted with responsibilities for administrative and budgetary matters.

(i) Ad Hoc *Committee on the Administration of Justice at the United Nations*

The *Ad Hoc* Committee on the Administration of Justice at the United Nations was established on 6 December 2007 by General Assembly decision 62/519[425] 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,[426] 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.

The *Ad Hoc* Committee on the Administration of Justice at the United Nations held its first session in 2008 and met from 10 to 18 and on 21 and 24 April 2008 at the Headquarters of the United Nations in New York. During the debate, delegations expressed their views on several issues, including the scope of the new system of administration of justice, the legal assistance for staff and the jurisdiction and powers of the United Nations Dispute Tribunal and the United Nations Appeals Tribunal. At its 2nd meeting, on 24 April 2008, the Committee adopted its report on its first session and approved various recommendations dealing with the item.[427]

The *Ad Hoc* Committee held its 3rd plenary meeting on 5 August 2008 for the purpose of taking note of the oral report of the coordinator on the informal intersessional consultations and to request the Secretary-General to issue the coordinator's summary as an addendum to the report of the *Ad Hoc* Committee.[428]

(ii) *Sixth Committee*

The Sixth Committee considered the item at its 1st, 15th and 26th meetings, on 6 and 24 October, and on 14 November 2008, respectively.[429] During its 1st meeting, the Chairman of the *Ad Hoc* Committee on the Administration of Justice at the United Nations introduced the report of the *Ad Hoc* Committee.[430]

At its 1st meeting, on the recommendation of the *Ad Hoc* Committee on the Administration of Justice at the United Nations, the Sixth Committee decided to establish a Working Group on the Administration of Justice at the United Nations, to finalize, as a priority, its deliberations on the draft statutes of the United Nations Dispute Tribunal and the United Nations Appeals Tribunal, bearing in mind resolution 62/228, in which the General Assembly decided to establish a two-tier formal system of administration of justice as from

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[425] *Official Records of the General Assembly, Sixty-second Session, Supplement No. 49* (A/62/49).

[426] A/C.5/61/21, appendix I, and A/C.5/62/11, appendix I.

[427] For the report of the *Ad Hoc* Committee on the Administration of Justice at the United Nations, see *Official Records of the General Assembly, Sixty-third Session, Supplement No. 55* (A/63/55). The recommendations are contained in section IV of the report.

[428] A/63/55/Add.1.

[429] For the report of the Sixth Committee, see A/63/451. For the summary records, see A/C.6/63/SR.1, 15 and 26.

[430] A/63/55 and Add.1

1 January 2009. The Working Group was also assigned to continue the discussion of the other legal aspects of the administration of justice at the United Nations.[431]

At its 15th meeting, the Sixth Committee adopted, with oral amendments, the text of the draft statutes of the United Nations Dispute Tribunal and the United Nations Appeals Tribunal,[432] and decided that its Chairman would transmit the text of the draft statutes to the Chairman of the Fifth Committee, through the President of the General Assembly.[433]

At the 15th meeting, on 24 October, the representative of Malaysia, on behalf of the Bureau, introduced a draft decision entitled "Administration of justice at the United Nations",[434] which was adopted at the same meeting without a vote.

(iii) *General Assembly*

On 11 December 2008, the General Assembly adopted without a vote, upon the recommendation of the Sixth Committee,[435] decision 63/531 in which it decided that the *Ad Hoc* Committee on the Administration of Justice at the United Nations would continue work on the outstanding legal aspects of the item, taking into account the results of the deliberations of the Fifth and Sixth Committees on the item, previous decisions of the Assembly and any further decisions that the Assembly may take during its sixty-third session prior to the meeting of the *Ad Hoc* Committee.

On 24 December 2008, the General Assembly adopted, on the recommendation of the Fifth Committee, resolution 63/253, by which it adopted the Statutes of the United Nations Dispute Tribunal and the United Nations Appeals Tribunal, annexed thereto.

(*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 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.[436] In 2008, 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

[431] For more information on the work of the Working Group, see oral report presented by the Chairman to the Sixth Committee, Summary record of the 15th meeting, A/C.6/63/SR.15.

[432] For the draft Statute of the United Nations Dispute Tribunal, see A/C.6/63/L.7. For draft Statute of the United Nations Appeals Tribunal, see A/C.6/63/L.8.

[433] See letter from the President of the General Assembly to the Chairman of the Fifth Committee, dated 27 October 2008, (A/C.5/63/9).

[434] A/C.6/63/L.9.

[435] A/63/450.

[436] General Assembly resolution 2819 (XXVI) of 15 December 1971.

Arab Jamahiriya, Malaysia, Mali, Russian Federation, Senegal, Spain, United Kingdom of Great Britain and Northern Ireland and United States of America.

In accordance with General Assembly resolution 62/72 of 6 December 2007, the Committee reconvened in 2008 and held five meetings: its 236th meeting, on 22 January 2008; its 237th meeting, on 22 April 2008; its 238th meeting, on 23 July 2008; its 239th meeting, on 2 October 2008 and its 240th meeting, on 31 October 2008.

During its 2008 session, the Committee dealt with the following topics: the question of security of missions and the safety of their personnel, entry visas issued by the host country, acceleration of immigration and customs procedures, and transportation (use of motor vehicles, parking and related matters). The Committee also dealt with other matters raised by the host country concerning, *inter alia*, an update on the changes in the procedure to claim exemptions to taxation of gasoline and other petroleum products, information on developments with regard to reimbursement of taxes paid on gasoline purchases, and the issue of property taxes levied by the City of New York on premises used by permanent missions to host diplomats.

At its 240th meeting, on 31 October 2008, the Committee approved various recommendations and conclusions dealing with the said matters.[437]

(ii) *Sixth Committee*

The Sixth Committee considered the item at its 26th meeting, on 14 November 2008,[438] during which the Chairman of the Committee on Relations with the Host Country introduced the report of the Committee.

During the debate, appreciation was expressed for the continued efforts of the Host Country to accommodate the needs of the diplomatic community. The importance of fulfilling its obligations under the Convention on the Privileges and Immunities of the United Nations of 13 February 1946[439] and the Headquarters Agreement[440] was also stressed at the meeting. Some delegations welcomed the decision of the Host Country to partly exempt the diplomats from secondary screening procedures and the efforts to ensure the timely issuance of visas. However, the Host Country was urged by some delegations to remove travel restrictions for staff of certain nationalities. A point was made that the outstanding issues concerning the selective treatment of diplomats in airports, transportation, immigration, customs procedures and tax exemptions should be addressed. Concerns regarding the imposition of property taxes were also raised. The Host Country was urged to issue visas in a timely fashion and to treat all missions on the basis of equality.

The Host Country confirmed its commitment to fulfil its obligations under international law and highlighted, in particular, the improvements of immigration procedures for diplomats at its airports. It also pointed out that restrictions on private non-official travel did not violate international law.

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[437] *Official Records of the General Assembly, Sixty-third Session, Supplement No. 26* (A/63/26).

[438] For the report of the Sixth Committee, see A/63/452. For the summary records, see A/C.6/63/SR.26.

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

[440] Contained in General Assembly resolution 169 (II) of 31 October 1947.

During the same meeting, the representative of Cyprus introduced a draft resolution entitled "Report of the Committee on Relations with the Host Country", which was adopted by the Sixth Committee without a vote.[441]

(iii) *General Assembly*

On 11 December 2008, the General Assembly adopted without a vote resolution 63/130, in which it endorsed the recommendations and conclusions of the Committee on Relations with the Host Country contained in its report.[442] In addition, 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 necessary measures 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 occurred, to ensure that such cases were properly investigated and remedied, in accordance with applicable law. Furthermore, the Assembly noted the problems experienced by some permanent missions in connection with the implementation of the Parking Programme for Diplomatic Vehicles. 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 anticipates that the Host Country will enhance its efforts to ensure the issuance, in a timely manner, of entry visas to representatives of Member States. The Assembly also noted that a number of delegations had requested shortening the time frame applied by the Host Country for issuance of entry visas to representatives of Member States, since this time frame posed difficulties for the full-fledged participation of Member States in United Nations meetings.

(*k*) Observer status in the General Assembly

(i) *Sixth Committee*

The Sixth Committee considered requests for observer status in the General Assembly by the South Centre, the University for Peace, and the International Fund for Saving the Aral Sea.

A draft resolution entitled "Observer status for the South Centre in the General Assembly",[443] was introduced by the representative of the United Republic of Tanzania, on behalf of several African countries, at the 11th meeting, on 21 October 2008. At its 25th

[441] For the draft resolution submitted by the Sixth Committee, see A/C.6/63/L.18.

[442] *Official Records of the General Assembly, Sixty-third Session, Supplement No. 26* (A/63/26), para. 51.

[443] A/C.6/63/L.3.

meeting, on 5 November, the Committee considered and adopted the draft resolution without a vote.[444]

On 5 November 2008, two draft resolutions entitled "Observer status for the International Fund for Saving the Aral Sea in the General Assembly"[445] and "Observer status for the University for Peace in the General Assembly"[446] were introduced by the representative of Tajikistan and the Representative of Costa Rica, respectively. The draft resolutions were considered and adopted by the Committee without a vote at its 25th and 26th meeting, on 5 and 14 November 2008.[447]

(ii) *General Assembly*

On 11 December 2008, the General Assembly adopted without a vote resolutions 63/131, 63/132 and 63/133, in which it decided to invite the South Centre, the University for Peace and the International Fund for Saving the Aral Sea, respectively, to participate in the sessions and the work of the General Assembly in their capacity of observers.

17. *Ad hoc* international criminal tribunals[448]

(*a*) Organization of the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR)

(i) *Organization of ICTY*

Judge Fausto Pocar (Italy) continued to act as President and Judge Kevin Parker (Australia) as Vice-President of the Tribunal until 17 November 2008, at which date Judge Patrick L. Robinson (Jamaica) and Judge O-Gon Kwon (South Korea) started their mandate as President and Vice-President, respectively, of the Tribunal. They were elected by the permanent judges in an Extraordinary Plenary Session on 4 November 2008 for a two-year term.

In November 2008, the Secretary-General appointed Judge Christoph Flugge (Germany) to the Tribunal for the remainder of the term of office of Judge Wolfgang Schomburg (Germany), who resigned from the Tribunal.

Thus, at the end of 2008, the 14 permanent judges of the Tribunal were as follows: Carmel Agius (Malta), Jean-Claude Antonetti (France), Iain Bonomy (United Kingdom of Great Britain and Northern Ireland), Liu Daqun (China), Christoph Flugge (Germany), O-Gon Kwon (South Korea), Theodor Meron (United States of America), Bakone Justice

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[444] For the report of the Sixth Committee, see A/63/453.

[445] A/C.6/63/L.13

[446] A/C.6/63/L.2.

[447] For the reports of the Sixth Committee, see, A/63/454 and A/63/455, respectively.

[448] 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.

Moloto (South Africa), Alphons Orie (Netherlands), Kevin Parker (Australia), Fausto Pocar (Italy), Patrick Robinson (Jamaica) and Christine Van den Wyngaert (Belgium).

On 9 October 2008, the term of office of the following *ad litem* judges was extended until 31 December 2009: Mr. Ali Nawaz Chowhan (Pakistan), Mr. Pedro David (Argentina), Ms. Elizabeth Gwaunza (Zimbabwe), Mr. Frederik Harhoff (Denmark) and Ms. Tsvetana Kamenova (Bulgaria). A temporary increase in the number of *ad litem* judges from a maximum of 12 to a maximum of 16 during the year 2008 was approved by the United Nations Security Council.[449]

The *ad litem* judges during 2008 were: 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), Flavia Lattanzi (Italy), Pedro David (Argentina), Michèle Picard (France), Uldis Ķinis (Latvia), Elizabeth Gwaunza (Zimbabwe), and Judge Melville Baird (Trinidad and Tobago).

(ii) *Organization of ICTR*

During the year 2008, Judge Dennis Byron (Saint Kitts and Nevis) served as President of the Tribunal and Judge Khalida Rachid Khan (Pakistan) as Vice-President.

The composition of the Tribunal during 2008 was as follows:

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 Solomy Balungi Bossa (Uganda) as permanent judges. Judges Seon Ki Park (Republic of Korea) and Taghrid Hikmet (Jordan) served as *ad litem* judges. Judges Joseph Osaka Nihal de Silva (Sri Lanka), Khalida Rashid Khan (Pakistan), Lee Gacuiga Muthoga (Kenya) and Emile Francis Short (Ghana) served as *ad litem* judges for Trial Chamber II and III.

Trial Chamber III was composed of Judges Dennis Charles Michael Byron (Saint Kitts and Nevis), Gberdao Gustave Kam (Burkina Faso) and Robert Fremr (Czech Republic), as permanent Judges. Judges Inés M. Weinberg de Roca (Argentina) and Judge Vagn Joensen served as *ad litem* judges in Trial Chamber III. *Ad litem* Judge Florence Rita Arrey, who served in Tria Chamber I, and *ad litem* Judges Khalida Rashid Khan, Lee Gacuiga Muthoga, Joseph Osaka Nihal de Silva, and Emile Francis Short in Trial Chamber II, all served as well in Trial Chamber III.

(iii) *Composition of the Appeals Chamber*

At the beginning of 2008, the seven-member bench of the shared Appeals Chamber of the two Tribunals was composed of Fausto Pocar (Italy), Mohamed Shahabuddeen

[449] For further information on the temporary increase in the number of *ad litem* judges approved by the United Nations Security Council, see section (c) (i) below.

(Guyana), Mehmet Güney (Turkey), Liu Daqun (China), Andresia Vaz (Senegal), Theodor Meron (United States of America), and Wolfgang Schomburg (Germany).

(*b*) General Assembly

On 13 October 2008, during its sixty-third session, the General Assembly adopted decisions 63/505 and 63/506,[450] which took note of the respective reports of ICTR[451] and ICTY.[452]

On 24 December 2008, on the recommendation of the Fifth Committee, the General Assembly also adopted resolutions 63/254 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 63/255 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".

On the same day, and on the recommendation of the Fifth Committee, the General Assembly adopted two resolutions concerning the internal organization of the two *ad hoc* Tribunals. In resolution 63/256, entitled "Comprehensive proposal on appropriate incentives to retain staff of the International Criminal Tribunal for Rwanda and the International Tribunal for the Former Yugoslavia", the Assembly recognized the critical importance of retaining highly-skilled and specialized staff in order to successfully complete all trial proceedings and to meet the targets set out in the respective completion strategies of the Tribunals in a timely manner, and therefore requested the Secretary-General to use the existing contractual frameworks to offer contracts to staff in order to remove uncertainty with regard to future employment with the aim of ensuring that the Tribunals had the necessary capacity to complete their respective mandates effectively.

In its resolution 63/259 entitled "Conditions of service and compensation for officials other than Secretariat officials: members of the International Court of Justice and judges and *ad litem* judges of the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda", the Assembly recalled its adoption of decision 62/547 on the same issue;[453] it also took note of the report of the Secretary-General[454] and the related report of the Advisory Committee on Administrative and Budgetary Questions.[455] While reaffirming the principle that the conditions of service and compensation for non-Secretariat United Nations officials shall be separate and distinct from those for officials of the Secretariat, the Assembly decided that any decisions with regard to the

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[450] See *Official Records of the General Assembly, Sixty-third Session, Supplement No. 49* (A/63/49, vol. II).

[451] See A/63/209-S/2008/514.

[452] See A/63/210-S/2008/515.

[453] See *Official Records of the General Assembly, Sixty-second Session, Supplement No. 49*, (A/62/49, vol. III).

[454] A/62/538/Add.2.

[455] A/63/570.

pension scheme shall apply only to the members of the International Court of Justice and the judges and *ad litem* judges of the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda and shall not constitute a precedent for any other category of judges working within the United Nations system. It was further decided that any decision regarding the service of any other category of judges shall be taken on a case-by-case basis. The Assembly requested the Secretary-General to make the necessary revisions to article 1, paragraph 2, of the Pension Scheme Regulations for the members of the International Court of Justice and for the judges of the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda, and to further report to the General Assembly on any additional expenditures resulting from the above decision. Furthermore, the Assembly decided to amend article 1, paragraph 7, of the Pension Scheme Regulations for members of the International Court of Justice and article 1, paragraph 5, of the Pension Scheme Regulations for judges of the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda to include a specific reference to the International Criminal Court so as to ensure that no former judge of any of these Courts received a pension while also serving as a judge of the International Criminal Court.

(*c*) Security Council

(i) *Appointment of additional* ad litem *Judges*

On 20 February 2008, the Security Council adopted resolution 1800 (2008) in which it considered the proposal made by the President of ICTY that the Secretary-General be authorized to appoint additional *ad litem* Judges upon request of the President of the International Tribunal notwithstanding the fact that their number would from time to time temporarily exceed the maximum of twelve provided under article 12 (1) of the Statute to a maximum of sixteen at any one time, returning to a maximum of twelve by 31 December 2008, to enable the International Tribunal to conduct additional trials once one or more of the permanent Judges of the International Tribunal became available.[456] Therefore, acting under Chapter VII of the Charter of the United Nations, the Council decided that the Secretary-General may appoint additional *ad litem* Judges accordingly to the above proposal, returning to a maximum of twelve by 31 December 2008. On 12 December 2008, the Council adopted resolution 1849 (2008), extending the terms of its resolution 1800 (2008); it took note of the request of the President of the International Tribunal for the former Yugoslavia,[457] and decided the returning to a maximum of twelve *ad litem* Judges by 28 February 2009.

On 19 December 2008, the Security Council adopted resolution 1855 (2008) in which it considered the proposal made by the President of the International Tribunal for Rwanda that the Secretary-General be authorized, to appoint additional *ad litem* Judges upon request of the President of the International Tribunal notwithstanding the fact that their

[456] For more information, see letters from Secretary-General to the President of the Security Council dated 22 January 2008 and 8 February 2008 (S/2008/44 and S/2008/99).

[457] For further information, see letter from the Secretary-General to the President of the Security Council dated 5 December 2008, attaching the letter to the latter from the President of the International Tribunal for the former Yugoslavia dated 26 November 2008 (S/2008/767, Annex).

number would from time to time temporarily exceed the maximum of nine provided under article 11, paragraph 1, of the Statute to a maximum of twelve at any one time, returning to a maximum of nine by 31 December 2008, to enable the International Tribunal to complete trials and conduct additional trials as soon as possible in order to meet its completion strategy. Therefore, acting under Chapter VII of the Charter of the United Nations, the Council decided that the Secretary-General may appoint additional *ad litem* Judges accordingly to the above proposal, returning to a maximum of nine by 31 December 2009.

(ii) *Amendments to the Statutes*

In 2008, the Security Council adopted three resolutions by which it amended the provisions relating to the composition of the Chambers of the ICTR and the ICTY. In resolution 1824 (2008), adopted on 18 July 2008, and resolution 1855 (2008), adopted on 19 December 2008, the Security Council, acting under Chapter VII of the Charter, decided to amend article 11, paragraphs 1 and 2, and article 11, paragraph 2, of ICTR Statute, respectively. On 29 September 2008, the Council adopted resolution 1837 (2008) by which it decided to amend, without prejudice to resolution 1800 (2008), article 12, paragraphs 1 and 2, of the ICTY Statute.

(iii) Ad hoc *mechanism to carry out functions of the Tribunals*

At the 6053rd meeting of the Security Council, held on 19 December 2008, the President of the Security Council made a statement on behalf of the Council,[458] in which he expressed the Security Council's acknowledgement of the need to establish an *ad hoc* mechanism to carry out a number of essential functions of the Tribunals, including the trial of high-level fugitives, after the closure of the Tribunals. Through the presidential statement, the Security Council expressed its appreciation to its Informal Working Group on International Tribunals for its work to date on the establishment of this mechanism, including through a thorough examination of which functions of the Tribunals were necessary for the administration of justice after their closure. The Council further requested the Informal Working Group on International Tribunals to continue its efforts in that regard and to concentrate on the main outstanding issues with a view to drafting as soon as possible appropriate instruments necessary for the performance of residual functions of the Tribunals.

(*d*) Amendments to the Rules of Procedure and Evidence of the ICTY

On 28 February 2008, during the thirty-fourth plenary session, rules 67 and 75 of the Rules of Procedure and Evidence (the Rules) of the ICTY were amended.

In amending rule 67, the additional disclosure was provided in favour of the Prosecutor. With the amendment, rule 67 comprised a provision whereby:

> "within the time-limit prescribed by the Trial Chamber, at a time not prior to a ruling under Rule 98 *bis*, but not less than one week prior to the commencement of the Defence case, the Defence shall: (i) permit the prosecutor to inspect permit the Prosecu-

[458] See Presidential statement dated 19 December 2008 (S/PRST/2008/47).

tor to inspect and copy any books, documents, photographs, and tangible objects in the Defence's custody or control, which are intended for use by the Defence as evidence at trial; and (ii) provide to the Prosecutor copies of statements, if any, of all witnesses whom the Defence intends to call to testify at trial, and copies of all written statements taken in accordance with Rule 92 *bis*, Rule 92 *ter*, or Rule 92 *quater*, which the Defence intends to present at trial. Copies of the statements, if any, of additional witnesses shall be made available to the Prosecutor prior to a decision being made to call those witnesses."

Rule 75 was amended as to increase protection for witnesses and victims by allowing the Chamber to order the non-disclosure to the public of any records identifying the victim or witness. In addition, a provision was added in the same rule by which the Victims and Witnesses Section must ensure that consent had been given by the protected victim or witness prior to any rescission, variation or augmentation of protective measures.

On 4 November 2008, at an Extraordinary Plenary Session, rule 45 *ter* was adopted by the Judges to enable the Trial Chamber, if the latter decided that it was in the interests of justice, to instruct the Registrar to assign a counsel to represent the interests of the accused.

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

1. Universal Postal Union

(*a*) Agreements

In January 2008, the Universal Postal Union (UPU) and the International Organization for Standardization (ISO) signed a cooperation agreement on the development of international standards in the area of postal services.

In April 2008, UPU signed an agreement with the United Nations Environment Programme (UNEP) aimed at strengthening cooperation on environmental protection and sustainable development.

In July 2008, during the 24th Universal Postal Congress, a memorandum of understanding was signed between the Union Network International (UNI) and UPU, with a view to continuing their collaborative efforts.

UPU was also admitted as an observer to the Governmental Advisory Committee (GAC) of the Internet Corporation for Assigned Names and Numbers (ICANN).

The UPU Council of Administration decided to classify Palestine for terminal dues and Quality of Service Fund purposes. A resolution of the 1999 Universal Postal Congress had authorized Palestine to conduct direct postal exchanges with Union member countries.

(*b*) Legislative matters

At the 24th UPU Congress, held in Geneva (Switzerland) from 23 July to 12 August 2008, certain amendments were made to the UPU Acts: the Eighth Additional

Protocol to the Constitution[459] and the new versions of the General Regulations, the Universal Postal Convention[460] and the Postal Payment Services Agreement[461] will enter into force on 1 January 2010.

The term "postal administration" was replaced throughout the UPU Acts by "member country" or "designated operator", depending on the context, so as to draw a clearer distinction between the regulatory and operational functions and responsibilities of the bodies of the Union with respect to the provision of international postal services.

(i) *Constitution*

A definition of the term "designated operator", stemming from the changes referred to above, was added, together with a definition of the term "reservation" in the context of the UPU Acts.

The role of member countries in ensuring that their designated operators fulfil the obligations arising from the UPU Acts was recalled in the Constitution.

(ii) *General Regulations*

A new article in the General Regulations sets out the responsibilities of the Universal Postal Congress.

The conditions of participation by businesses in the Consultative Committee, which represents the interests of the wider postal sector, were clarified: only businesses supporting the mission and objectives of the Union may now be members.

A four-yearly report on the implementation of Union strategy, drawn up by the International Bureau and the Postal Operations Council, was introduced.

It was also specified that designated operators should refer to their member countries any disputes needing to be resolved by arbitration between designated operators.

(iii) *Universal Postal Convention*

There were also a few changes to the Convention. The obligation for member countries to adopt a sustainable development strategy was expanded so as to cover social and economic issues in addition to environmental issues.

The provisions on electronic mail services were also updated to allow for the possibility of designated operators offering a registered e-mail service.

The issue of the sending of infectious substances through the post was clarified and a reference to the relevant UN classification was added.

Concerning terminal dues, the Convention now distinguishes between those countries that were part of the target system prior to 2010, or from 2010 onwards, or are in the

[459] United Nations, *Treaty Series,* vol. 611, p. 64.

[460] United Nations, *Treaty Series,* vol. 1687, p. 181.

[461] Postal Payment Services Agreement, Beijing, 15 September 1999, entered into force on 1 January 2001.

transitional system. It provides exceptions to the principle of transparency in rate-setting between designated operators, based on this classification and on certain conditions.

(iv) *Postal Payment Services Agreement*

At the 24th Congress, a new Postal Payment Services Agreement was adopted by Union member countries. The result of work aimed at recasting and improving the old Agreement initiated by the previous Congress. This new multilateral framework covers postal payment services transmitted both in paper form and by electronic means.

(v) *Other Congress decisions*

The 24th Congress adopted the next world postal strategy, which comprises four objectives aimed at modernizing global postal services at all levels, whether in terms of institutional reform or quality of service improvement, postal security and universal postal service, or raising awareness of the impact of postal services on the environment and climate change.

In addition, the member countries adopted a proposal in Geneva to develop and implement a global monitoring system which will measure quality of service for incoming priority mail and establish a link between this quality of service and terminal dues.

2. International Labour Organization

(*a*) Declaration and resolutions adopted by the International Labour Conference at its 97th session (Geneva, June 2008)

At the 97th session of the International Labour Conference the following declaration and resolutions were adopted.[462]

(i) *Declaration on Social Justice for a Fair Globalization*

The International Labour Organization (ILO) unanimously adopted the ILO Declaration on Social Justice for a Fair Globalization, and its accompanying resolution, on 10 June 2008. This is the third major statement of principles and policies adopted by the International Labour Conference since the ILO Constitution of 1919. The 2008 Declaration expresses the contemporary vision of ILO mandate in the era of globalization. It reaffirms ILO values and emphasizes ILO key role in helping to achieve progress and social justice in the context of globalization. The Declaration, *inter alia*, institutionalizes the "decent work" concept developed by the ILO since 1999, placing it at the core of the Organization's policies to reach its constitutional objectives. It also recognizes that other international and regional organizations can have an important contribution to make in the implementation of the Decent Work Agenda and ILO should invite them to promote decent work.

[462] The full text of the declaration and resolutions adopted can be found on the website of the International Labour Organization at: http://www.ilo.org.

(ii) *Resolutions*

(*a*) Resolution concerning strengthening the ILO capacity.

(*b*) Resolution concerning promotion of rural employment for poverty reduction.

(*c*) Resolution concerning the ILO and the tripartite constituents' role in tackling the global food crisis.

(*d*) Resolution concerning skills for improved productivity, employment growth and development.

(*e*) Resolution concerning the Financial Report and Audited Financial Statements for 2006–07.

(*f*) Resolution concerning treatment of net premium earned.

(*g*) Resolution concerning the scale of assessments of contributions to the budget for 2007.

(*h*) Resolution concerning the arrears of contributions of Comoros.

(*i*) Resolution concerning the arrears of contributions of the Central African Republic.

(*j*) Resolution concerning the arrears of contributions of Iraq.

(*k*) Resolution concerning the arrears of contributions of the Solomon Islands.

(*l*) Resolution concerning the Statute of the Administrative Tribunal of the International Labour Organization.

(*m*) Resolution concerning the composition of the Administrative Tribunal of the International Labour Organization.

(*b*) New members

Tuvalu became the 182nd member of the International Labour Organization and was admitted under article 1.3 of the ILO Constitution on 27 May 2008.

3. International Civil Aviation Organization

(*a*) General Work Programme of the Legal Committee

Pursuant to a decision of the 184th Session of the Council, the General Work Programme of the Legal Committee was as follows:

(i) *Compensation for damage caused by aircraft to third parties arising from acts of unlawful interference or from general risks*

The 33rd Session of the Legal Committee, held in Montreal from 21 April to 2 May 2008, had this subject as its main item for consideration. The Committee agreed on the following texts:

– Draft Convention on Compensation for Damage to third parties, Resulting from Acts of Unlawful Interference Involving Aircraft; and

– Draft Convention on Compensation for Damage Caused by Aircraft to Third Parties.

On 23 June 2008, the Council decided to convene a Diplomatic Conference at International Civil Aviation Organization (ICAO) Headquarters, from 20 April to 2 May 2009, to finalize and adopt the texts of these two draft Conventions.

(ii) *Acts or offences of concern to the international aviation community and not covered by existing air law instruments*

The Sub-Committee of the Legal Committee held its second meeting in February 2008 and prepared two draft texts to amend The Hague Convention of 1970[463] and the Montreal Convention of 1971.[464] The Council agreed in June to convene the 34th session of the Legal Committee in the second half of 2009 for further consideration of these texts.

(iii) *Consideration, with regard to Communication, Navigation, Surveillance/Air Traffic Management systems including global navigation satellite systems (GNSS) and the regional multinational organisms, of the establishment of a legal framework*

The Secretariat continued to monitor the work in this respect.

(iv) *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.[465] The Council issued its first report to contracting states to the Cape Town Convention and Protocol concerning the discharge of its functions as Supervisory Authority and, at its 183rd session, approved changes to the Regulations and Procedures for the International Registry. At its third meeting in December, the Commission of Experts of the Supervisory Authority of the International Registry (CESAIR) recommended further changes proposed by the Registrar for approval by the Council.

(v) *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, such as meetings, and continued emphasis on ratification matters by the President of the Council and the Secretary-General during their visits to States.

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[463] United Nations, *Treaty Series*, vol. 860, p. 105.

[464] United Nations, *Treaty Series*, vol. 974, p. 177.

[465] 2001 Convention on international interests in mobile equipment on matters specific to aircraft equipment, United Nations, *Treaty Series*, vol. 2307, p. 285.

(vi) *Safety aspects of economic liberalization and article 83 bis*

In June 2008, the Council requested the Secretariat to further monitor and develop, as necessary, the issue of safety aspects of economic liberalization and article 83 *bis* of the Convention on International Civil Aviation[466] and to add this item to the General Work Programme of the Legal Committee.

(*b*) Working Group on Governance (Policy)

In March 2008, during its 183rd session, the Council decided to establish a Working Group on Governance (Policy) (WGOG). The WGOG was mainly tasked to review: the international governance as per the Chicago Convention[467] as requested by the Assembly; the organization of future sessions of the Assembly; and the presentation of the decisions of the Assembly, as well as the question of reservations thereto. The WGOG decided to prioritize its work on the issues pertaining to the Assembly, including recommendations on the establishment of an electronic voting system for the elections of the Council, so as to present a report on this item in early 2009.

The Council further tasked the WGOG, in June and October respectively, to review the issue of the participation of observers in the Legal Committee as well as the process for electing the officers (Chairman and Vice-Chairmen) of this Committee with a view to establishing a more systematic and effective approach.

Moreover, in November 2008, during its 185th Session, the Council requested the WGOG to consider the increased use of extraordinary sessions of the Assembly to avoid a multiplicity of meetings every year and to facilitate the decision-making process and report thereon to the Council. During the same session, the Council also mandated the WGOG to study the question of allocation of seats on the Council, being understood that the Group would give that issue priority after it had completed its other tasks.

(*c*) External relations

On 18 November 2008, the Secretary-General announced that the External Relations and Public Information Office (EPO) had been disbanded and that the staff responsible for external relations functions were transferred with their posts to the Legal Bureau, which was renamed the Legal Affairs and External Relations Bureau (LEB).

(*d*) Ratification of international air law instruments

Work commenced in 2008 to enhance the Legal Bureau's Treaty Collection on the ICAO website. When completed, it will contain current lists of parties to treaties; status forms of individual States with regard to treaties; a composite table showing parties to treaties and status of individual States; a chronological record of depositary activity; and

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[466] United Nations. *Treaty Series*, vol. 15, p. 295.

[467] Convention on International Civil Aviation, Chicago, 1944. United Nations, *Treaty Series*, vol. 15, p. 296.

administrative packages to assist States in becoming parties to international air law instruments. The current Treaty Collection is being updated with each depositary action.

(*e*) Settlement of disputes

In a number of instances, the Legal Bureau assisted the President of the Council and the Secretary-General in their efforts to encourage or facilitate negotiations between States in cases of emerging disputes.

(*f*) Technical cooperation projects and initiatives

Ten technical cooperation projects were implemented to support activities linked to international air law.

ICAO recruited 13 international experts to advise civil aviation administrations in the development or updating of civil aviation legislation, including basic civil aviation law and regulations addressing ICAO Standards and other international civil aviation-related treaties for incorporation into national law.

Eighteen nationals received specialized training in the field of air and space law.

4. Food and Agriculture Organization of the United Nations

(*a*) Legislative matters

(i) *Activities connected with international meetings*

- United Nations Education, Scientific and Cultural Organization (UNESCO) Meeting on draft International Law Commission (ILC) Shared Groundwater Rules (Japan, 26-31 January 2008);
- Food and Agriculture Organization (FAO) Regional Workshop on Port State Measures to Combat Illegal, Unregulated and Unreported (IUU) Fishing (Cape Town, Republic of South Africa, 28-31 January 2008);
- FAO Technical Consultation on International Guidelines for the Management of Deep-Sea Fisheries in the High Seas (Rome, Italy, 4-8 February 2008);
- FAO Expert Consultation on Improving Planning and Policy Development in Aquaculture (Rome, Italy, 26-29 February 2008);
- Report of the Expert Consultation on the Development of a Comprehensive Global Record of Fishing Vessels (Rome, Italy, 25-28 February 2008);
- FAO/Asia-Pacific Fishery Commission (APFIC)/Southeast Asian Fisheries Development Center (SEAFDEC) Regional Workshop on Port State Measures to Combat IUU Fishing (Bangkok, Thailand, 31 March - 4 April 2008);
- FAO Expert Meeting on Climate Change Implications for Fisheries and Agriculture (Rome, Italy, 7-9 April 2008);
- Meeting of Legal Experts for Wild Water Development (Italy, 21-24 April 2008);

- FAO Regional Workshop "Development of Sustainable Wildlife Management Laws in Western and Central Asia" (Antalaya, Turkey, 12-16 May 2008);
- FAO Regional Workshop on Aquatic Animal Health in Western Balkan, Sarajevo, Bosnia and Herzegovina (20-23 May 2008);
- FAO Technical Consultation to Draft a Legally-Binding Instrument on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (Rome, Italy, 23-27 June 2008);
- Second Session of the Technical Consultation on International Guidelines for the Management of Deep-Sea Fisheries in the High Seas (Rome, Italy, 25-29 August 2008);
- Expert Consultation on Best Practice Technical Guidelines for IPOA/NPOA-Seabirds[468] (Bergen, Norway, 2-5 September 2008);
- FAO Technical Workshop on Environmental Impact Assessment and Monitoring in Aquaculture (Rome, Italy, 15-17 September 2008);
- Seminar on Climate Change and Developing Countries: International Market-based Instruments, organized by the International Development Law Organization (Rome, Italy, 6-17 October 2008);
- Regional Intergovernmental meeting to initiate the Establishment of a Central Asian Regional Fisheries Organization (Dushanbe, Tajikistan, 10-12 November 2008);
- FAO Expert Consultation on Best Practices for Safety at Sea in the Fisheries Sector (Rome, Italy, 10-13 November 2008);
- FAO Expert workshop on "Guidelines for the implementation of an ecosystem approach to aquaculture (EAA)" (Rome, Italy, 24-26 November 2008);
- Informal open-ended Technical Meeting to Review the Annexes of the Draft Legally-Binding Instrument on Port State Measures to Prevent, Deter and Eliminate TUU Fishing (Rome, Italy, 25-27 November 2008);
- FAO Regional workshop "Ecosystem Approach to Fisheries - Opportunities for Africa" (Rome, Italy, 16 December 2008);

(ii) *Legislative assistance and advice*

During 2008, legislative assistance and advice were given to the following countries and regions on the following topics:

a. Agrarian legislation

Angola, Azerbaijan, Bangladesh, Barbados, Belarus, Benin, Burkina Faso, Burundi, Cameroon, Cape Verde, Chile, People's Republic of China, Colombia, Costa Rica, Dominica, Ethiopia, Ghana, Guinea-Bissau, Haiti, Kosovo, Lebanon, Lithuania, Maldives, Mozambique, Namibia, Togo, Mali, Montenegro, Niger, Rwanda, Sen-

[468] International Plan of Action for Reducing Incidental Catch of Seabirds in Longline Fisheries (IPOA-Seabirds) and the National Plan of Action for Reducing Incidental Catch of Seabirds in Longline Fisheries (NPOA-Seabirds).

egal, Grenada, Saint Lucia, Saint Vincent and the Grenadines, Sao Tome and Principe, Sierra Leone, the Sudan, Syrian Arab Republic, Tajikistan, Tonga, Uruguay and Yemen.

b. Water legislation

Egypt, Grenada, Kenya, Malaysia, People's Republic of China, Regional Asia and Pacific, the Sudan, Thailand, Tanzania and Viet Nam.

c. Veterinary Legislation

Belize, Cambodia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Guinea-Bissau, Honduras, Nepal, Nicaragua, Panama and the Philippines.

d. Plant protection legislation, including pesticides control

Afghanistan, Cambodia, Costa Rica, El Salvador, Eritrea, Ethiopia, Gambia, Ghana, Kenya, Laos, Maldives, Nepal, Panama, the Philippines, Senegal, Swaziland and Ukraine.

e. Seed legislation and plant variety protection

Afghanistan, Cote d'Ivoire, Iraq, Lesotho, Madagascar, Sri Lanka, Turkmenistan. In addition, legislative assistance was provided through a regional project for the countries of the Economic Cooperation Organisation (ECO), comprising Afghanistan, Azerbaijan, Islamic Republic of Iran, Kazakhstan, Kyrgyz Republic, Pakistan, Tajikistan, Turkey, Turkmenistan and Uzbekistan.

f. Food legislation

Afghanistan, Azerbaijan, Barbados, Colombia, Costa Rica, Dominican Republic, Madagascar, Nepal, Panama, Philippines, Somalia, Tajikistan, Uruguay and Viet Nam.

g. Fisheries and aquaculture legislation

Bolivia, Bosnia and Herzegovina, Colombia, Democratic Republic of the Congo, Honduras, Lao People's Democratic Republic, Mauritania, Morocco, Peru, Senegal, Uruguay and Viet Nam. In addition, legislative assistance was provided through a regional project for the Regional Fisheries Committee for the Gulf of Guinea (COREP), comprising Congo, Democratic Republic of the Congo, Gabon, and Sao Tome and Principe.

h. Forestry and wildlife legislation

Algeria, Altai Republic of the Russian Federation, Angola, Cape Verde, Central African Republic, Chile, Democratic Republic of the Congo, Egypt, Georgia, Honduras, Kenya, Nicaragua, Niue, Rwanda, Syria, South Sudan, Timor-Leste, Tonga and Uzbekistan. In addition, legislative assistance was provided through a regional project for the Central African Forest Commission (COMIFAC), comprising Gabon, Equatorial Guinea, Chad, Sao Tome and Principe, Burundi and Rwanda.

i. Biodiversity and genetic resources legislation

Afghanistan, Dominica, Democratic Republic of the Congo, Kenya, Madagascar, Morocco and Philippines.

j. Biotechnology legislation

Bangladesh, Benin, Croatia, Kenya, Madagascar, the Philippines and Sri Lanka.

k. General agricultural issues (trade, markets and economic reform)

Morocco, Georgia, the Sudan and Tunisia. In addition, legislative assistance was provided through a regional project for the African Union, comprising 53 countries of the African Continent.

(iii) *Legislative Research and publications*

The FAO Legal Office published the following Legal Papers Online[469] in 2008:

- Customary water rights and contemporary water legislation: Mapping out the interface; Principles for developing sustainable wildlife management laws;
- Trends in food legislation in Southeastern Europe: Lessons from a regional technical cooperation project;
- Pacific land tenures: new ideas for reform;
- *Le droit forestier en République Démocratique du Congo*;
- Terra firma and shared cooperation: how land frameworks facilitate pro-food security public-private partnerships;
- Participatory forestry in Central Asia and the Caucasus: Current legal trends and future perspectives.

(iv) *Collection, translation and dissemination of legislative information*

The FAO Legal Office maintains a database (FAOLEX) of national legislation and international agreements concerning food and agriculture (including fisheries, forestry and water). FAOLEX is designed to provide online access to the full texts of food and agriculture legislation worldwide and offers access to legislation, regulations and international agreements in sixteen different areas related to FAO fields of expertise. It is a comprehensive research tool that can be used to identify the state of national laws on natural resource management and, at the same time, compare legislation in different countries. FAOLEX provides a keyword and category search in four languages (English, French, Spanish and Arabic). Records are provided in English, French or Spanish according to the language of communication used by the originating country.

In 2008, 7600 records were entered into FAOLEX.

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[469] The Legal Papers Online are available on the FAO website at http://www.fao.org/legal/prs-ol/years/2008/list08.htm.

Together with FAOLEX, also the Coastal State Requirements for Foreign Fishing (FISHLEX) and the International agreements on international water sources (WATER TREATIES) databases were updated in 2008.

In 2008, the WATERLEX database, started originally as a joint project with the World Health Organization, with a view to having a common and complementary database of both water resources legislation and water quality standards was redesigned. The water legislation component, developed by FAO, being at a more advanced stage, has been redesigned and hosted by the FAO Legal Office Website. Until its migration to the FAO Website, the database was housed at waterlawandstandards.org. The legislative database contains an analysis of the legal framework governing water resources in a large number of countries. The analysis is presented in the form of answers to a detailed list of questions canvassing most of the features of a country's legal framework on water resources. The questions include, for example, whether there is a basic water law in the country; what kinds of water it covers; who owns water; who is authorized to use water and how; whether and how pollution is controlled; and the nature of the government's administrative structure for water abstraction and use. The database can be used to examine the national legislation on water resources of any particular country or across any number of countries, comparing one or more features of the country's or countries' national legislation on water resources. The database can also be searched by region. Where possible, the database provides access to the text of the legislation being analysed, through a link to FAOLEX.

With regard to ECOLEX, which is the information service on environmental law, operated jointly by FAO, the International Union for Conservation of Nature (IUCN) and the United Nations Environmental Programme (UNEP), the bases of the new portal have been designed and work on cross-search including various databases (FAO, IUCN and UNEP) has been finalized and launched in various occasions.

In June 2008, the Database on Port State Measures (Port-Lex) was launched on the FAO website as a result of joint collaboration by FAO Legal Office and the FAO Fisheries Department. Port-Lex provides online access to legislated port state measures adopted by states to prevent, deter and eliminate Illegal, Unreported and Unregulated (IUU) fishing. The database provides users with access to indexed port state measures, extracts of legal documents and links to full versions of legal texts through FAOLEX – FAO legislative database. The main objective of Port-Lex is to make information on port state measures available to policy-makers, national administrations, legal practitioners and civil society members worldwide. By making available "best practices", the database will contribute to national capacity-building toward adoption and implementation of port state measures to fight against IUU fishing, and help countries coordinate their efforts along the way. The database is available in three languages: English, French and Spanish.

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, no multilateral conventions or agreements adopted under the auspices of United Nations Educational, Scientific and Cultural Organization (UNESCO) entered into force.

(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

During 2008, preparatory work was undertaken on the Draft declaration of principles relating to cultural objects displaced in connection with the Second World War. This Draft declaration is inscribed in the provisional agenda of the 35th session of the General Conference (6-23 October 2009).

b. Preliminary study of the technical and legal aspects of a possible international standard-setting instrument for the protection of indigenous and endangered languages

During 2008, preparatory work was undertaken on the Preliminary study of the technical and legal aspects of a possible international standard-setting instrument for the protection of indigenous and endangered languages. This Preliminary study is inscribed in the provisional agenda of the 35th session of the General Conference (6-23 October 2009).

c. Preliminary study on the technical and legal aspects relating to the desirability of a standard-setting instrument on the conservation of the historic urban landscape

During 2008, preparatory work was undertaken on the Preliminary study on the technical and legal aspects relating to the desirability of a standard-setting instrument on the conservation of the historic urban landscape. This Preliminary study is inscribed in the provisional agenda of the 35th session of the General Conference (6-23 October 2009).

(*b*) Human Rights

Examination of cases and questions concerning the exercise of human rights coming within UNESCO fields of competence

The Committee on Conventions and Recommendations met in private sessions at UNESCO Headquarters from 2 to 4 April 2008 and from 1 to 3 October 2008 in order to examine communications which had been transmitted to it in accordance with Decision 104 EX/3.3 of the Executive Board.

At its April 2008 session, the Committee examined 26 communications of which 8 were examined with a view to determining their admissibility or otherwise, 16 were exam-

ined 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 remaining 25 was deferred. The Committee presented its report to the Executive Board at its 179th session.

At its October 2008 session, the Committee examined 26 communications of which one was examined with a view to determining its admissibility, 24 were examined as to their substance and one was examined for the first time. Five communications were struck from the list because they were considered as having been settled. One communication was suspended. The examination of the 20 was deferred. The Committee presented its report to the Executive Board at its 180th session.

(*c*) Copyright activities

(i) *Information and public awareness activities*

Collection of national copyrights laws. This tool, essential for professionals, students and researchers, endeavours to provide access to legal texts. It comprises more than 120 national copyright and related rights legislations of UNESCO member States.

Another UNESCO information-sharing initiative in the copyright area is the web-based resource (World Anti-Piracy Observatory) currently in development. Its objective is to monitor anti-piracy issues and to serve as an online platform (clearing house) for the exchange of information and best practices in this area.

(ii) *Training and teaching activities*

Teaching of copyright law has been pursued by the existing network of UNESCO Copyright Chairs.

(iii) *Administration of the Universal Copyright convention of 1971*[470] *and the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations of 1961*[471]

The 14th session of the Intergovernmental Copyright Committee (ICC), established under the Universal Copyright Convention,[472] for which UNESCO provides the Secretariat, will take place in 2010. The 20th session of the Intergovernmental Committee of the Rome Convention[473] (ICR), for which the secretariat is provided jointly by UNESCO, WIPO and ILO, will be hosted by WIPO and will take place in September 2009.

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[470] United Nations, *Treaty Series*, vol. 943, p. 193.

[471] United Nations, *Treaty Series*, vol. 496, p. 43.

[472] United Nations, *Treaty Series*, vol. 216, p. 132.

[473] Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations. United Nations, *Treaty Series*, vol. 496, p. 43.

(iv) *Prevention of piracy through training*

In the framework of the Anti-Piracy Training for Trainers project, launched in 2004, UNESCO organized a sub-regional seminar for copyright enforcement officials from ten countries in West Africa in Dakar, Senegal, in September 2008, and contributed to the organization of national follow-up anti-piracy seminars in some beneficiary countries. The objective of these initiatives is to provide knowledge and expertise in the field of copyright law and intellectual property to large circles of national enforcement officers involved in anti-piracy activities (law-makers, government, police, customs, magistrates etc.).

6. International Maritime Organization

(*a*) Membership

As of 31 December 2008, the membership of the International Maritime Organization (IMO) stood at 168.

(*b*) Review of the legal activities

The Legal Committee (the Committee) met only once in 2008 and held its ninety-fourth session from 20 to 24 October 2008.

(i) *Monitoring the implementation of the Convention on Hazardous and Noxious Substance Convention*[474] *(HNS Convention)*

The Committee considered a draft Protocol to the 1996 HNS Convention.

a. Packaged Hazardous and Noxious Substance

The Committee noted that one of the main reasons preventing States from becoming Party to the HNS Convention was the difficulty in collecting data and reporting on packaged HNS.

There was general agreement that the difficulties presented by packaged HNS could be overcome by not requiring packaged goods to be included in contributing cargo and increasing shipowner liability as a compromise, and that, consequently, entry into force of the HNS Convention would be facilitated.

b. Contributions to the Liquefied Natural Gas Account

The Committee considered proposals for changing the person liable for contributions on Liquefied Natural Gas (LNG) from the titleholder to the receiver to eliminate inconsistencies with other contributing cargo regimes in the Convention and to provide for a

[474] For the status of the Convention, see the IMO website at www.imo.org/Conventions/mainframe.asp?topic_id=247.

more equitable distribution of financial responsibility between developed and developing countries.

The Committee considered three options: option A, retaining the titleholder as in the 1996 Convention; option B, imposing liability solely on the receiver; and option C, a compromise proposal under which the person liable for contributions would normally be the receiver, except that, by agreement between the titleholder and receiver, the titleholder would be liable.

Most delegations that spoke were in favour of option C, which, in their view, provided the necessary flexibility, took into account industry practice, was easy to manage, put LNG receivers on a level playing-field with receivers in other accounts and resolved the potential legal problem of collecting contributions from a non-member State of the HNS Fund.

In response to the question how the inequitable distribution between developed and developing countries was dealt with in the proposal, it was noted that this was by making the receiver liable in the first instance and giving the option for its substitution by the titleholder.

c. Remedies to ensure submission of contributing cargo reports by States, on ratification of the Convention, and annually thereafter

The Committee considered proposals to address the problem of non-submission of reports before the entry into force of the Convention, and once the Convention had entered into force.

Although article 43 of the 1996 HNS Convention requires States, when depositing their consent to be bound by the Convention and annually thereafter, until the Convention enters into force, to submit to the Secretary-General of IMO data on the relevant quantities of contributing cargoes received, not all the Contracting States had done so. As a consequence, the Secretary-General was not in a position to determine the date of entry into force of the Convention.

In order to rectify this position, it was proposed to require States to submit reports on contributing cargo as an essential precondition for the validity of expressing their consent to be bound by the Protocol. Accordingly, any expression of consent which is not accompanied by such reports would not be accepted by the Secretary-General.

The Contracting State would also be obliged to continue to submit reports annually thereafter until the Protocol enters into force. Failure to do so would render that State temporarily suspended from being a contracting State, which situation would continue until it had submitted the required data. The Protocol would, therefore, not enter into force for a State which is in arrears with its reports nor would that State be counted for the purposes of entry into force of the Protocol.

With regard to the obligation to submit reports after the entry into force of the Protocol, article 10 of the draft Protocol proposed the addition of a new article to the Convention pursuant to which, once the Protocol has entered into force for a State, compensation would be withheld temporarily pending compliance with the reporting obligation, except for claims for death and personal injury. If the State in question failed to report within one year after receiving notification from the Director of its failure to fulfil these obligations, compensation would be denied permanently.

Most delegations that spoke expressed their support for the policy behind these proposed changes.

However, some delegations expressed concern as to whether the temporary suspension, as well as the powers conferred on the Depositary to refuse to accept an instrument not accompanied by data on contributing cargo were in line with international law. The Director, LED, responded to these questions in the affirmative.

Some delegations noted that, in spite of the simplification afforded by the Protocol, it remained a complex treaty instrument, in particular for developing States. In this context, these delegations noted the importance of capacity building in ensuring universal and uniform application of IMO instruments, as addressed in resolution A.998(25). IMO and the International Oil Pollution Compensation Funds (IOPC) were invited to step up their assistance to make sure that developing States could cope with the complexities of the proposed HNS regime and were assisted in its implementation.

The Committee's attention was drawn to the work already undertaken by the Committee in developing an HNS implementation guide as well as the HNS cargo calculator, both of which could be found in the website of the IOPC Funds.

d. Definition of HNS

The Committee discussed and approved amendments to the definition of HNS aimed at ensuring that these were fully up to date.

e. Recommendation for the convening of a diplomatic conference

The Committee exchanged views on the timing for the convening of a diplomatic conference to consider and adopt a Protocol based upon the draft text before the Committee.

A view was expressed that it was premature to go to a diplomatic conference at that point in time and that further discussions on the draft were needed, bearing in mind that some issues had not been properly clarified. Among these issues, mention was made of the legal situation of States that, having become parties to the 1996 HNS Convention, would now have to consider first adopting, and then becoming parties to the Protocol. The argument was made that, theoretically, the possibility existed that both the HNS Convention and the Protocol could enter into force, in which case complex treaty relationships would arise. Even if the 1996 Convention never came into force, Government officials in States that had either signed, or become Contracting parties to it, would be faced with the difficult task of advising their constitutional bodies on a substantive change of policy based upon the fact that they had ratified an unsuccessful treaty and, as a result, would have to withdraw their ratification or signature of the Convention which might violate relevant treaty law rules and should be further considered by those States and the Committee.

In response to these concerns, reference was made to the precedent of the co-existence of the two IOPC Fund Conventions (the 1971 Convention[475] and its 1992 Protocol[476]) and how this situation had been successfully managed by the progressive denunciation by States of the 1971 Convention in favour of the 1992 Protocol. It was also noted that the

[475] United Nations, *Treaty Series*, vol. 1110, p. 57.

[476] United Nations, *Treaty Series*, vol. 1953, p. 330.

option for an HNS Protocol did not imply a change of policy, but rather the enforcement of a remedy to the very serious obstacles to ratification posed by the 1996 treaty.

Reference was also made to the need to develop capacity-building programmes before the adoption of the Protocol, in order to help developing countries to cope with its complexities. In response, it was noted that the need to develop such programmes should not be used to delay the adoption of treaties whose implementation was overdue, as was the case of the HNS Convention. In any event, the Protocol aimed at facilitating the application of the parent Convention by making it simpler for developed and developing countries alike to implement it. It was also proposed that the capacity-building objectives essential to the global application of the HNS regime could be enshrined in the Preamble to the Protocol.

In respect of the timing of a diplomatic conference, the Committee agreed to recommend to the Council that a diplomatic conference be convened as soon as possible in 2010, to consider and adopt the prospective Protocol.

(ii) *Provision of financial security: Progress report on the work of the Joint IMO/ILO Ad Hoc Expert Working Group on Liability and Compensation regarding Claims for Death, Personal Injury and Abandonment of Seafarers*

The Committee unanimously:

– Noted and approved the revised terms of reference in terms of which the Group should continue with its examination of the issue of financial security for crew members/seafarers and their dependants with regard to compensation in cases of personal injury, death and abandonment, taking into account relevant IMO and ILO instruments; continue to monitor the problem of abandonment of crew members/seafarers; agree on principles to facilitate the drafting of mandatory provisions for inclusion in an appropriate instrument or instruments; and formulate appropriate recommendations to the IMO Legal Committee and the ILO Governing Body;

– Urged the Joint Working Group to complete its discussions at its next session, keeping in mind the debates at this session; and

– Encouraged the Group to formulate appropriate recommendations to the Committee and to submit the outcome of its work to the ninety-fifth session of the Committee.

(iii) *Follow-up on resolutions adopted by the International Conference on the Removal of Wrecks, 2007: development of a single model compulsory insurance certificate*

The Committee recalled that the resolution on compulsory insurance certificates under existing maritime liability conventions, adopted by the International Conference on the Removal of Wrecks, 2007, had invited the Committee to develop a model for a single insurance certificate which may be issued by States parties in respect of ships, under the relevant IMO liability and compensation conventions.

At the Committee's request at its ninety-third session, the Secretariat had prepared a draft single model insurance certificate. The model combined certificates issued under article

VII of the Convention on Civil Liability for Oil Pollution Damage, 1969[477] (CLC), article 7 of the Protocol amending CLC, 1992,[478] article 12 of the HNS 1996, article 7 of the Bunkers Convention, 2001,[479] and article 12 of the Nairobi Wreck Removal Convention.[480] The model certificate did not, however, include the 1976 Athens Protocol,[481] due to its different nature as compared with the other liability conventions, and the IMO Reservation and Guidelines for the implementation of the Athens Convention,[482] which included a number of specific exclusions in the Protocol, to reflect existing standard market conditions.

There was general consensus that a single insurance certificate would be desirable, since it could lead to a reduction in the administrative burden of States and shipowners/insurers when compared with the system prescribed by the Conventions.

The Committee decided to establish an informal correspondence group in order to progress intersessionally on the legal as well as on the technical and practical aspects of the consolidated model certificate, including port State control and inspection.

The delegation of the Netherlands accepted to act as coordinator of the correspondence group and to submit the outcome of its consultations with other interested delegations to the Committee's ninety-fifth session.

(iv) *Fair treatment of seafarers in the event of a maritime accident*

The Committee noted information relating to the adoption by the Maritime Safety Committee, at its eighty-fourth session in May 2008, of amendments to the International Convention for the Safety of Life at Sea, 1974[483] (SOLAS) which included a provision on the right of a seafarer from whom evidence was sought in a casualty investigation to "be informed, and allowed access to legal advice, regarding" the risk of self-incrimination. This decision was taken in the context of the Maritime Safety Committee (MSC) approval of the Code of the International Standards and Recommended Practices for a Safety Investigation into a Marine Casualty or Marine Incident (Casualty Investigation Code).

States were urged to give the Guidelines on fair treatment of seafarers in the event of a maritime accident and the Casualty Investigation Code full and complete effect following a maritime accident.

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[477] United Nations, *Treaty Series*, vol. 973, p. 3.

[478] United Nations, *Treaty Series*, vol. 1956, p. 255.

[479] The International Convention on Civil Liability for Bunker Oil Pollution Damage was adopted on 23 March 2001 and entered into force on 21 November 2008. For the status of the Convention, see: http://www.imo.org/Conventions/contents.asp?topic_id=256&doc_id=666.

[480] The Nairobi International Convention on the Removal of Wrecks. For the text of the Convention, see LEG/CONF.16/19.

[481] United Nations, *Treaty Series,* vol. 1545, p. 339.

[482] Athens Convention relating to the Carriage of Passengers and their Luggage by Sea. United Nations, *Treaty Series*, vol. 1463, p. 19.

[483] United Nations, *Treaty Series*, vol. 1184, p. 2.

(v) *Technical cooperation activities related to maritime legislation*

The Committee received a report of Technical Cooperation activities undertaken by the Organization in the legal field. The Director, Technical Cooperation Division (TCD), referred to the measures being taken to expand the pool of experts through enhancement of capacity building, in particular, by establishing a roster of all International Maritime Law Institute (IMLI) and World Maritime University (WMU) graduates, and sending them on missions with experts to enable them to gain important experience.

In addition, the Director, TCD, advised the Committee that:

– IMO had continued to finance fellowships for IMLI students;

– many countries were being helped with developing maritime legislation, but as such missions were normally limited to 7 to 10 days for cost reasons, countries could help by mobilizing national legal resources, including IMLI graduates, to work with consultants;

– the Integrated Technical Cooperation Programme (ITCP) was designed to enhance capacity for implementing IMO rules and standards. The Technical Cooperation Committee (TCC) had established a framework of major areas of concern in the field of maritime legislation as a base for developing countries to identify their specific needs, and this will guide IMO in developing the ITCP for 2010-2011; and

– in order to demonstrate that technical cooperation acted as a catalyst for change, an Impact Assessment Exercise (IAE) of the ITCP had been carried out, including maritime legislation, and this was submitted to TCC 58 with comments from member States to be discussed at TCC 59.

The Committee noted the recommendations concerning identification of legal experts and the recommendations concerning the time line for requesting assistance in maritime legislation.

(vi) *Work Programme*

Guidelines on methods of work

The Committee recalled that, at its ninety-seventh session, the Council had agreed that it would be appropriate and beneficial that the Legal Committee, taking into consideration its differing needs, harmonize its work methods with those of the Maritime Safety Committee (MSC) and the Marine Environment Protection Committee (MEPC). The Committee also recalled that, at its ninety-third session, it had requested an Informal Working Group to consider what provisions of the MSC-MEPC guidelines on the methods of work might appropriately be incorporated into the Legal Committee's guidelines on methods of work. At that time, the Committee had agreed that the Group's recommendations should be presented to the current session of the Committee for its consideration.

In commenting on the Working Group's recommendations, a number of delegations expressed satisfaction with the proposals and said that it was essential that the Committee establish working methods which were harmonized with those of other IMO bodies.

(vii) *Any other business: International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001*

a. Information regarding fuel oil and other oil spill incidents exceeding the limits of international treaties

The delegation of Japan introduced document LEG 94/11/1 proposing that the IMO Secretariat should collect information on incidents of fuel oil spills that exceeded the limits of the shipowner's liability under the Bunkers Convention and other international conventions. The delegation informed the Committee that the proposal should be expanded to include not only fuel oil spill incidents covered by the Convention, but also spills covered by other treaties.

The Secretariat noted that, following consultations within the Organization, it had concluded that it did not have the means to perform the task of collecting, analysing and distributing such information. As a regulatory body, it was not involved in the processing of claims and, consequently, it might be better to seek this information from other entities, perhaps the P & I Clubs.

The Committee noted with appreciation the P & I Clubs' readiness to assist with regard to the possibility of providing the information required, in consultation with other organizations such as the International Tanker Owners Pollution Federation Ltd. (ITOPF).

b. Issuing of insurance certificates regulated in the Bunkers Convention

The observer delegation of the P & I Clubs introduced document LEG 94/11/2, submitted by the P & I Clubs and the International Chamber of Shipping (ICS), containing information on the issuing of compulsory insurance certificates by States parties to the Bunkers Convention to ships flying the flag of non-Party States. The delegation reported that, while as at August 2008, no Party was ready to issue such certificates, the situation had changed, thanks to the cooperation of several States. He also referred to the increasing number of certificates that would have to be issued on expiration of the present cover on 20 February 2009, and requested States parties to inform the delegation if they would not be prepared to issue certificates to ships calling at one of their ports or terminals. He expressed the hope that, by then, more States would have become parties to the Bunkers Convention and would be in a position to issue certificates, not only in connection with their own ships, but also in connection with ships flying the flag of non-Party States. He reminded the Committee of the advantages of issuing certificates on the strength of electronic blue cards.

Several States parties to the Bunkers Convention indicated their willingness to issue certificates against the presentation of blue cards, including electronic cards, and also for the period between the entry into force of the Bunkers Convention and 20 February 2009. One State Party indicated that it was reviewing its policy in this regard as it had doubts about whether it should issue such certificates to ships on the Paris Port State Control Memorandum of Understanding black or grey list.

c. Implementation of the Bunkers Convention and bareboat registration

The delegation of the Marshall Islands requested the views of the Committee in connection with two issues, namely:

– insurance certificates for bareboat charter registered vessels, which were issued by the Marshall Islands as the flag State and not by the State of the underlying registry; and
– the legal status of offshore drilling units, or Mobile Offshore Drilling Units (MODUs), bearing in mind that the Bunkers Convention does not discriminate between propelled and non-propelled ships and defines a ship as being any type of seagoing vessel and seaborne craft of any type whatsoever. In view of the definition of bunker oil contained in article 1.5, it would appear that MODUs and other non-propelled units which use hydrocarbon mineral oil, including lubricating oil, for the operation of the ship, should be included within the scope of the Convention.

While some delegations supported the views of the Marshall Islands on both issues, others noted that their legislation provided for the State of the underlying registry rather than the flag State to issue certificates attesting compulsory insurance, not only in connection with the Bunkers Convention, but also in connection with the CLC.

The Committee noted that both issues raised complex questions of law and, accordingly, suggested that any further consideration would require submission of documents.

(*c*) Treaties concerning international law concluded under the auspices of the International Maritime Organization (IMO)

Amendments to treaties

a. Code of the International Standards and Recommended Practices for a Safety Investigation into a Marine Casualty or Marine Incident[484] (Casualty Investigation Code) (under SOLAS 1974)

This Code was adopted by the Maritime Safety Committee on 16 May 2008, by resolution MSC.255(84). At the time of its adoption, the Maritime Safety Committee determined that it would take effect on 1 January 2010, upon the entry into force of the amendments to regulation XI-1 of the International Convention for the Safety of Life at Sea (SOLAS), 1974,[485] adopted by the Committee by resolution MSC.257(84).

b. 2008 amendments to the International Convention for the Safety of Life at Sea, 1974 (chapters II-1, II-2, III, IV and appendix to the annex)

These amendments were adopted by the Maritime Safety Committee on 16 May 2008, by resolution MSC.256(84). At the time of their adoption, the Maritime Safety Committee determined that the amendments shall be deemed to have been accepted on 1 July 2009 and shall enter into force on 1 January 2010 unless, prior to 1 July 2009, 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 at 31 December 2008, no such notification of objection had been received.

[484] The Code is available at the IMO website at http://www.imo.org.

[485] United Nations, *Treaty Series*, vol. 1184, p. 2.

c. 2008 amendments to the International Convention for the Safety of Life at Sea, 1974 (chapter XI-1)

These amendments were adopted by the Maritime Safety Committee on 16 May 2008, by resolution MSC.257(84). At the time of their adoption, the Maritime Safety Committee determined that the amendments shall be deemed to have been accepted on 1 July 2009 and shall enter into force on 1 January 2010 unless, prior to 1 July 2009, 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 at 31 December 2008, no such notification of objection had been received.

d. 2008 amendments to the Protocol of 1988 relating to the International Convention for the Safety of Life at Sea, 1974 (appendix to the annex)

These amendments were adopted by the Maritime Safety Committee on 16 May 2008, by resolution MSC.258(84). At the time of their adoption, the Maritime Safety Committee determined that the amendments shall be deemed to have been accepted on 1 July 2009 and shall enter into force on 1 January 2010 unless, prior to 1 July 2009, 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, had notified their objections to the amendments. As at 31 December 2008, no such notification of objection had been received.

e. 2008 amendments to the International Code of Safety for High-Speed Craft, 1994 (1994 HSC Code) (under SOLAS 1974)

These amendments were adopted by the Maritime Safety Committee on 16 May 2008, by resolution MSC.259(84). At the time of their adoption, the Maritime Safety Committee determined that the amendments shall be deemed to have been accepted on 1 July 2009 and shall enter into force on 1 January 2010 unless, prior to 1 July 2009, 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 at 31 December 2008, no such notification of objection had been received.

f. 2008 amendments to the International Code of Safety for High-Speed Craft, 2000 (2000 HSC Code) (under SOLAS 1974)

These amendments were adopted by the Maritime Safety Committee on 16 May 2008, by resolution MSC.260(84). At the time of their adoption, the Maritime Safety Committee determined that the amendments shall be deemed to have been accepted on 1 July 2009 and shall enter into force on 1 January 2010 unless, prior to 1 July 2009, 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 at 31 December 2008, no such notification of objection had been received.

g. 2008 amendments to the Guidelines on the enhanced programme of inspections during surveys of bulk carriers and oil tankers (resolution A.744(18)), as amended (under SOLAS 1974)

These amendments were adopted by the Maritime Safety Committee on 16 May 2008, by resolution MSC.261(84). At the time of their adoption, the Maritime Safety Committee determined that the amendments shall be deemed to have been accepted on 1 July 2009 and shall enter into force on 1 January 2010 unless, prior to 1 July 2009, 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 at 31 December 2008, no such notification of objection had been received.

h. 2008 amendments to the International Maritime Dangerous Goods (IMDG) Code (under SOLAS 1974)

These amendments were adopted by the Maritime Safety Committee on 16 May 2008, by resolution MSC.262(84). At the time of their adoption, the Maritime Safety Committee determined that the amendments shall be deemed to have been accepted on 1 July 2009 and shall enter into force on 1 January 2010 unless, prior to 1 July 2009, 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 at 31 December 2008, no such notification of objection had been received.

i. 2008 amendments to the Convention on the International Mobile Satellite Organization (IMSO)[486]

Amendments to the IMSO Convention, extending IMSO oversight to all Global Maritime Distress Safety System (GMDSS) providers recognized by IMO, and enhancing IMSO role as Long range identification and tracking of ships (LRIT) Coordinator, were adopted by the IMSO Assembly at its twentieth session, on 3 October 2008, in conformity with article 18 of the Convention. The IMSO Assembly decided on a provisional application of the amendments, with effect from 6 October 2008, pending their formal entry into force.

The amendments would enter into force 120 days after notices of acceptance had been received from two-thirds of those States which, at the time of adoption by the Assembly, were parties to the Convention. The number of parties to the Convention at the time of adoption of the amendments was 92. The number of acceptances necessary for entry into force was, therefore, 61. As at 31 December 2008, no such notice of acceptance had been received.

Following the IMSO Assembly's decision to apply the 2008 amendments provisionally, with effect from 6 October 2008, it further decided to terminate, with effect from the same date, the decision, taken at its eighteenth session, to adopt the 2006 amendments to the Convention, as well as the decision taken at its nineteenth (Extraordinary) session, that these amendments should be applied provisionally with effect from 7 March 2007.

[486] For the text of the Convention, see IMSO website at http://www.imso.org.

j. 2008 amendments to the Annex of the Protocol of 1997 to amend the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto (revised MARPOL Annex VI)[487]

These amendments were adopted by the Marine Environment Protection Committee on 10 October 2008, by resolution MEPC.176(58). At the time of their adoption, the Marine Environment Protection Committee determined that the amendments shall be deemed to have been accepted on 1 January 2010 and shall enter into force on 1 July 2010 unless, prior to 1 January 2010, not less than one-third of MARPOL parties, or parties the combined merchant fleets of which constitute not less than 50 per cent of the gross tonnage of the world's merchant fleet, have notified their objections to the amendments. As at 31 December 2008, no such notification of objection had been received.

k. 2008 amendments to the Technical Code on Control of Emission of Nitrogen Oxides from Marine Diesel Engines (NO_x Technical Code) (under MARPOL 73/78)

These amendments were adopted by the Marine Environment Protection Committee on 10 October 2008, by resolution MEPC.177(58). At the time of their adoption, the Marine Environment Protection Committee determined that the amendments shall be deemed to have been accepted on 1 January 2010 and shall enter into force on 1 July 2010 unless, prior to 1 January 2010, not less than one-third of MARPOL parties, or parties the combined merchant fleets of which constitute not less than 50 per cent of the gross tonnage of the world's merchant fleet, have notified their objections to the amendments. As at 31 December 2008, no such notification of objection had been received.

7. World Health Organization

(*a*) Constitutional developments

No new member State joined WHO in 2008.

Also, no new amendments to the Constitution[488] were proposed or adopted, and neither of the two current amendments entered into force. The current amendments were the amendment to article 7 and the amendment to article 74 of the Constitution. The amendment to article 7 of the Constitution was adopted by the Eighteenth World Health Assembly by resolution WHA 18.48 of 20 May 1965. The amendment to article 74 of the Constitution was adopted by the Thirty-first World Health Assembly by resolution WHA 31.18 of 18 May 1978. Respectively, they had been accepted by 98 and 112 member States. Amendments shall come into force for all members when adopted by a two-thirds vote of the Health Assembly and accepted by two-thirds of the members in accordance with their respective constitutional processes.

[487] United Nations, *Treaty Series*, vol. 1340, p. 61.

[488] United Nations, *Treaty Series*, vol. 14, p. 185.

(*b*) Other normative developments and activities

(i) *International Health Regulations (2005)*[489] *("IHR (2005)" or the "Regulations")*

In accordance with article 22 of the Constitution of the World Health Organization (WHO) and articles 59 and 60 of the IHR (2005), the Regulations entered into force for Montenegro on 5 February 2008. With the inclusion of Montenegro, there were 194 States parties to the IHR (2005).

In 2008, the Second Edition of the IHR (2005) was published by WHO in the six official languages.[490]

During 2008, in accordance with Annex 2 of the IHR (2005), the case definitions for notification of four specified diseases were established by WHO and published (in English) on the WHO website: Smallpox; Poliomyelitis due to wild-type poliovirus; Human influenza caused by a new subtype; and Severe acute respiratory syndrome (SARS).[491]

In resolution WHA 61.2 of 23 May 2008, "Implementation of the IHR" (2005),[492] the Health Assembly reaffirmed its commitment to implement fully the IHR (2005) in accordance with articles 2 and 3. The Health Assembly also decided: (1) on annual reporting to the Health Assembly by States parties and the Director-General on implementation of the Regulations in accordance with paragraph 1 of article 54; (2) that in accordance with paragraph 2 of article 54, the first review of functioning of the Regulations shall be made to the Sixty-third World Health Assembly; and (3) that in accordance with paragraph 3 of article 54 the first review and evaluation of the functioning of Annex 2 was to be submitted to the Sixty-second World Health Assembly for its consideration. In addition, the Health Assembly urged member States to ensure that their National IHR Focal Point contact details were complete and up to date and to encourage staff to use the WHO IHR Event Information Site, to take steps to ensure that core capacity requirements in Annex of the Regulations were developed and maintained in accordance with articles 5 and 13 of the IHR (2005), to designate an expert (if not already done so) for the IHR Roster of Experts, and to continue to support each other and collaborate with WHO in implementation of the Regulations. The Health Assembly requested the Director-General to submit annually to the Health Assembly a single report including information provided by the States parties and about Secretariat activities pursuant to paragraph 1 of article 54, to support member States with the most vulnerable health systems in strengthening capacity requirements for surveillance and response at points of entry (airports, ports and ground crossings) with special attention to the sub-Saharan Africa laboratory network, and to encourage efforts to ensure effective communication between National IHR Focal Points and WHO IHR Contact Points as well as sharing of information on outbreaks.

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[489] Entered into force on 15 June 2007.

[490] Available at: http://www.who.int/csr/ihr/IHR_2005/en/index.html.

[491] Available at: http://www.who.int/esr/ihr/case_definitions/en/index.html.

[492] Available at: http://www.who.int/esr/ihr/A61_R2-en.pdf. All cited resolutions from the World Health Assembly are available at: http://www.who.int/gb/ebwha/pdf_files/WHA61-REC1/A61_REC1-en.pdf.

In resolution WHA 61.1 of 23 May 2008, "Poliomyelitis: mechanism for management of potential risks to eradication", the World Health Assembly requested the Director-General "to report to the Health Assembly when she determines that transmission of wild poliovirus type 1 is likely to have been interrupted globally, and to submit with that report a proposal or proposals for review by the Executive Board for a mechanism to mitigate the risk of the reintroduction of poliovirus that does not involve amending the International Health Regulations (2005) or developing another binding instrument".

(ii) *Amendments to Basic Documents*

The sixty-first World Health Assembly, by resolution WHA 61.11, decided on 24 May 2008 to add to the Rules of Procedure of the World Health Assembly a new rule 12*bis*, which reads as follows:

> Rule 12*bis* - At each session the provisional agenda and, subject to rule 12, any proposed supplementary item, together with the report of the General Committee thereon, shall be submitted to the Health Assembly for its adoption as soon as possible after the opening of the session.

Furthermore, the sixty-first World Health Assembly by resolution WHA 61.11, decided to abolish the Committee on Nominations, and consequently to delete rules 24 and 25 of the Rules of Procedure of the World Health Assembly. Rules 26, 31, 34, 36 and 92, which referred to the Committee on Nominations or to its report, were amended accordingly.

Moreover, it was decided to amend rule 68 of the Rules of Procedure of the World Health Assembly. Rule 68 provided that, if two or more proposals are moved, the Health Assembly shall vote on them starting with the proposal deemed by the President to be furthest removed in substance from the proposal first presented, then on the proposal next removed there from and so on. This method of voting on multiple proposals used by the Health Assembly and the Board was in contrast with the method employed in the rules of procedure of governing bodies of all other United Nations system organizations. The latter rules consistently provided that, if two or more proposals are moved, the body concerned shall vote on the proposals in the order in which they were submitted, *i.e.* in chronological order. By amending rule 68, the World Health Assembly aligned this rule with the model followed by other United Nations system organizations.

Lastly, the sixty-first World Health Assembly by resolution WHA 61.13 decided on 24 May 2008 to amend article VI of the Statute of the International Agency for Research on Cancer.[493] Amendments were made relating to: the number of members of the Scientific Council; the means by which members of the Scientific Council were nominated; and advice to be provided concerning the expertise required on the Scientific Council in the identification of members.

The Executive board in its 122nd session on 24 January 2008 decided, by Resolution EB122.R8, to amend rules 9 and 38 of the Rules of Procedure of the Executive Board. The reason for amending rule 9 was that the Director-General and the Officers of the Board experienced difficulties in drawing up the provisional agenda because member States pro-

[493] Established by the Eighteenth World Health Assembly by resolution WHA 18.44 of 20 May 1965, the Statute being annexed thereto.

posing agenda items frequently limited themselves to providing the title of the proposed item without any further explanations. It was therefore decided to add a new paragraph to rule 9, which would require new proposals for inclusion in the provisional agenda of the Board to be accompanied by an explanatory memorandum.

Rule 38 of the Rules of Procedure of the Executive Board was amended for the same reason as the World Health Assembly amended the above mentioned rule 68 of the Rules of Procedure of the World Health Assembly.

(iii) *Intergovernmental Working Group on Public Health, Innovation and Intellectual Property*

In April 2008, the second session of the Intergovernmental Working Group on Public Health, Innovation and Intellectual Property was resumed. The task of the Intergovernmental Working Group on Public Health, Innovation and Intellectual Property, established by resolution WHA 59.24, was to draw up a draft global strategy and plan of action in order to provide a medium-term framework based on the recommendations of the Commission on Intellectual Property Rights, Innovation and Public Health. The framework would aim, *inter alia*, at securing an enhanced and sustainable basis for needs-driven, essential health research and development relevant to diseases that disproportionately affect developing countries.

In its resumed second session, the Working Group continued its consideration of the draft global strategy and plan of action through three drafting groups. Two drafting groups discussed the components of the draft global strategy and the third drafting group reviewed further the matrix containing the plan of action.

The Working Group reached agreement on most aspects of the draft global strategy and transmitted the strategy to the World Health Assembly, which adopted, by Resolution WHA 61.21, the strategy and the agreed parts of the plan of action on public health, innovation and intellectual property

(iv) *Guidelines for Drinking-water Quality*

Since 1958, WHO Guidelines for Drinking-water Quality have been used by developing and developed countries worldwide as the basis of regulation and standard setting to ensure the safety of drinking-water. In 2008, a second addendum further updated the third edition of the Guidelines. The second addendum included more guidance on a variety of issues, including, for example, household water management, rainwater harvesting, vended water, temporary water supplies and pesticides used for vector control in drinking-water sources. It also included a series of new microbial and chemical fact sheets. Moreover, "expanded" fact sheets are included for key chemical risks such as arsenic, fluoride, and nitrate/nitrite.

(v) *Agreement with the Government of Turkey*

On 15 February 2008, WHO signed an Agreement with the Government of Turkey on the establishment of a WHO Country Office in Turkey, by which the Government of Turkey and the WHO agreed to convert the present Liaison Office into a Country Office.

(vi) *Host Agreement with the Government of the Hellenic Republic*

On 29 October 2008, WHO signed a Host Agreement with the Government of the Hellenic Republic concerning the establishment of the Office for the Support to the Prevention and Control of Non-communicable Diseases in Athens, Greece. The establishment of the Athens office was aimed at strengthening the WHO/EURO work on non-communicable diseases as a follow-up to the adoption of the European Strategy for the Prevention and Control of Non-communicable Diseases as per resolution of the Regional Committee for Europe EUR/56/R2.

(*c*) Third session of the Conference of the Parties to the WHO Framework Convention on Tobacco Control[494]

The third session of the Conference of the parties to the WHO Framework Convention on Tobacco Control was held in Durban, South Africa, from 17 to 22 November 2008.

In relation to convention instruments, the Conference adopted three guidelines for implementation of different articles of the Convention, requested continuation of work on elaboration of two other guidelines by existing working groups, and established two new working groups. Regarding implementation and reporting, the Conference promoted reporting arrangements under the Convention, reviewed the global implementation progress and reviewed assistance to parties in implementing the Convention. Concerning institutional and budgetary matters, the Conference, in particular, adopted the next budget and work plan, accredited new observers and adopted a logo.

The Intergovernmental Negotiating Body (INB) on a Protocol on Illicit Trade in Tobacco Products that had been established by the second session of the Conference, held two sessions, from 11 to 15 February and from 20 to 25 October 2008, in Geneva. Representatives of more than 130 parties participated in each session. The INB reported to the third session of the Conference on the progress of its work. The Conference requested the INB to continue its work for the purpose of submitting the text of a draft protocol on illicit trade in tobacco products to the fourth session of the Conference, to be held in late 2010.

In 2008, the following States became parties to the WHO Framework Convention on Tobacco Control: Colombia, Costa Rica, Croatia, Guinea, Iraq, Italy, Nicaragua, the Russian Federation and Zambia. There were 160 parties to the Convention at the end of 2008.

8. International Atomic Energy Agency

(*a*) Membership

In 2008, Nepal became a member State of the International Atomic Energy Agency (IAEA). By the end of the year, there were 145 member States.

[494] United Nations, *Treaty Series*, vol. 2302, p. 166.

(*b*) Privileges and immunities

In 2008, the Republic of Moldova became party to the Agreement.[495] By the end of the year, there were 79 States parties.

(*c*) Legal instruments

(i) *Convention on the Physical Protection of Nuclear Material, 1979*[496]

In 2008, the Bahamas, the Central African Republic, Fiji, Gabon, Guinea-Bissau, Mauritania and Saint Kitts and Nevis became party to the Convention. By the end of the year, there were 138 parties.

(ii) *Amendment to the Convention on the Physical Protection of Nuclear Material, 2005*[497]

In 2008, Australia, Fiji, Gabon, Hungary, Mauritania, Republic of Moldova, the Russian Federation, Switzerland and Ukraine adhered to the Amendment. By the end of the year, there were 22 contracting States.

(iii) *Convention on Early Notification of a Nuclear Accident, 1986*[498]

In 2008, Gabon became party to the Convention. By the end of the year, there were 102 parties.

(iv) *Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency, 1986*[499]

In 2008, Denmark and Gabon became party to the Convention. By the end of the year, there were 101 parties.

(v) *Convention on Nuclear Safety, 1994*[500]

In 2008, Iceland and Malta became party to the Convention. By the end of the year, there were 62 parties.

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[495] Agreement on the Privileges and Immunities of the International Atomic Energy Agency, 1 July 1959. United Nations, *Treaty Series*, vol. 374, p. 147.

[496] United Nations, *Treaty Series*, vol. 1456, p. 124.

[497] United Nations, *Treaty Series*, vol. 1456, p. 101.

[498] United Nations, *Treaty Series*, vol. 1439, p. 275.

[499] United Nations, *Treaty Series*, vol. 1457, p. 133.

[500] 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*[501]

In 2008, Tajikistan became party to the Joint Convention. By the end of the year, there were 46 parties.

(vii) *Vienna Convention on Civil Liability for Nuclear Damage*[502]

In 2008, the status of the Convention remained unchanged with 35 parties.

(viii) *Protocol to Amend the Vienna Convention on Civil Liability for Nuclear Damage, 1997*[503]

In 2008, 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*[504]

In 2008, the status of the Protocol remained unchanged with 25 parties.

(x) *Convention on Supplementary Compensation for Nuclear Damage, 1997*[505]

In 2008, the United States of America became party to the Convention. By the end of the year, there were 4 contracting States.

(xi) *Optional Protocol Concerning the Compulsory Settlement of Disputes*[506]

In 2008, the status of the Protocol remained unchanged with 2 parties.

(xii) *Revised Supplementary Agreement Concerning the Provision of Technical Assistance by the IAEA (RSA)*[507]

In 2008, the status remained unchanged with 109 member States which have concluded the RSA.

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[501] United Nations, *Treaty Series*, vol. 1963, p. 293.
[502] United Nations, *Treaty Series,* vol. 1063, p. 266.
[503] United Nations, *Treaty Series,* vol. 2241, p. 270.
[504] United Nations, *Treaty Series*, vol. 1672, p. 293.
[505] INFCIRC/567.
[506] United Nations, *Treaty Series*, vol. 2086, p. 94.
[507] 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)*[508]

In 2008, the status of the Agreement remained unchanged with 13 parties.

(xiv) *African Regional Co-operative Agreement for Research, Development and Training Related to Nuclear Science and Technology (AFRA) - (Third Extension)*[509]

In 2008, the status of the Agreement remained unchanged with 30 parties.

(xv) *Cooperation Agreement for the Promotion of Nuclear Science and Technology in Latin America and the Caribbean (ARCAL)*[510]

In 2008, the Dominican Republic became party to the Agreement. By the end of the year, there were 15 parties.

(xvi) *Cooperative Agreement for Arab States in Asia for Research, Development and Training Related to Nuclear Science and Technology (ARASIA)*[511]

The first extension of the Agreement entered into force on 29 July 2008. In 2008 there were 7 parties.

(xvii) *Agreement on the Establishment of the ITER International Fusion Energy Organization for the Joint Implementation of the ITER Project*[512]

In 2008, the status of the Agreement remained unchanged with 7 parties.

(xviii) *Agreement on the Privileges and Immunities of the ITER International Fusion Energy Organization for the Joint Implementation of the ITER Project*[513]

In 2008, the status of the Agreement remained unchanged with 6 parties.

(*d*) Legislative assistance activities

A workshop for diplomats on nuclear law was held in Vienna, Austria, in February 2008. Presentations on the international legal framework relating to nuclear safety, nuclear

[508] INFCIRC/167/Add.22.

[509] INFCIRC/377 and INFCIRC/377/Add.18 (Third Extension).

[510] INFCIRC/582.

[511] INFCIRC/613/Add.1.

[512] INFCIRC/702.

[513] INFCIRC/703.

security and safeguards were delivered. In addition, participants were provided with an overview of the IAEA Legislative Assistance Programme.

A workshop for senior government officials from selected countries in Africa on Implementing Legislation in Nuclear Security was held in October in Vienna, Austria. The purpose of the workshop was to provide participants with in-depth information on the international instruments governing nuclear security and the synergies between security and safeguards. The workshop also presented participants with best practices and model provisions on implementing legislation in the area of nuclear security as well as information on the IAEA legislative assistance programme and on the assistance available under the IAEA Nuclear Security Plan.

In 2008, the IAEA conducted international teams of experts (ITE) missions to five countries in order to promote consideration of adherence to, and implementation of, international legal instruments relevant to the protection against nuclear terrorism.

In 2008, the IAEA conducted three national workshops on the legislative framework governing peaceful uses of nuclear energy. These workshops focussed on the need to establish adequate national legislation covering safety, security, safeguards and liability for nuclear damage. The international legal instruments adopted under the Agency's auspices were also addressed and member States were invited to incorporate the provisions of these instruments into their national nuclear law.

In 2008, the IAEA also assisted 23 countries in their efforts to establish, develop, or review their national laws and regulations governing the safe and peaceful uses of nuclear energy and to adopt implementing legislation for the international instruments to which they had or intended to adhere.

In respect of implementing legislation on the criminal provisions of the international instruments relating to nuclear terrorism, the IAEA and the United Nations Office on Drugs and Crime (UNODC) jointly developed model criminal provisions; the IAEA also cooperated with UNODC in three regional workshops held respectively for the Commonwealth of Independent States in Belarus (January 2008), the Gulf States in Qatar (April 2008) and the League of Arab States in Egypt (November 2008).

(*e*) Convention on Nuclear Safety

In April 2008, Contracting Parties to the Convention on Nuclear Safety (CNS) met in Vienna for their Fourth Review Meeting, with 55 of the 61 Contracting Parties participating. The participants conducted a thorough peer review of the Contracting parties' national reports. For each Contracting Party, the participants identified good practices and specific areas for improvement. The participants also concluded that all Contracting Parties in attendance were in compliance with the requirements of the CNS and that nuclear safety performance at nuclear power programmes (NPPs) remained strong. The Contracting Parties noted that the nuclear industry and regulators had to avoid any complacency resulting from this success. Contracting Parties also noted that a number of challenges remained, including effective regulatory separation and independence and new reactor licensing. A number of Contracting Parties also noted positive experiences with the IAEA safety standards and review missions. Contracting Parties encouraged those countries considering NPPs to join the CNS well in advance of launching their NPPs.

(*f*) Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management

In preparation for the Third Review Meeting of the Contracting Parties to the Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management (JC) to be held in May 2009, an Organizational Meeting of the Contracting Parties was held in October 2008 in Vienna. In accordance with the Rules of Procedure and Financial Rules of the JC, 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 Third Review Meeting, including among others, on how to establish continuity and ongoing dialogue between Review Meetings, ensure the robustness of the peer review process and increase the number of contracting parties to the JC.

(*g*) 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) 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 94 States as of the end of 2008.

Throughout 2008, 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, 52 States had written to the IAEA Director General by the end of 2008, indicating their commitment to follow the Guidance.

An Open-ended Meeting of Technical and Legal Experts for Sharing of Information on lessons learned from States' Implementation of the Supplementary Guidance on the Import and Export of Radioactive Sources was held from 26 to 28 May 2008. The objective of the meeting was to provide a forum where participants could share their experiences and lessons learned in implementing the Guidance. The meeting brought to light several significant issues including difficulties in the provision of information to exporting States on the regulatory and technical capacity of importing States, the need for assistance in the development of regional networks and/or the utilization of existing networks to discuss the implementation of the Guidance, and a potential gap that might exist in relation to the notification of the transit or transshipment of sources across the territory of States. Participants noted that implementation of the Guidance had only recently commenced, and that it was therefore too early to make a definitive assessment of its impact; however successes and improvements in the control of the international transfer of sources were shared, as were the challenges and difficulties faced. It was decided that the next information exchange meeting, planned for 2010, would provide an opportunity to undertake a

review of the Guidance in accordance with its paragraph 20; at the same time, it was noted that any revision should be approached with caution.

(*h*) Code of Conduct on the Safety of Research Reactors

An international meeting on the application of the Code of Conduct on the Safety of Research Reactors was conducted in October 2008 in Vienna. The large number of member States represented at this meeting showed evidence of interest in the Code of Conduct and its application in regulation and operation. This is especially important in light of the renewed interest in nuclear technologies today. In many fields, research reactors are an essential part of building the required nuclear safety and technical infrastructures of the country and realizing the benefits of nuclear technology. Many of the presentations focused on the legal and regulatory infrastructure, in particular to improve the laws and regulations in line with the recommendations of the Code of Conduct. During 2008, safety standards for research reactors continued to be produced. These provide key technical requirements and recommendations that are needed to implement the Code of Conduct and achieve enhanced nuclear safety.

(*i*) 1997 Protocol to Amend the Vienna Convention on Civil Liability for Nuclear Damage and the 1997 Convention on Supplementary Compensation for Nuclear Damage

The Protocol to Amend the Vienna Convention on Civil Liability for Nuclear Damage (the "1997 Vienna Convention") and the Convention on Supplementary Compensation for Nuclear Damage (the "1997 CSC"), provide that a contracting party within whose territory a nuclear installation is situated or by which or under the authority of which that installation is operated "may, if the small extent of the risks involved so warrants, exclude any nuclear installation from the application of the Convention, provided that criteria for such exclusion have been established by the Board of Governors of the International Atomic Energy Agency; and any exclusion by an Installation State satisfies such criteria".

In line with the above, it had been proposed that certain nuclear installations being decommissioned and certain small training and research reactors could be excluded from the scope of application of the 1997 Vienna Convention and the 1997 CSC. These proposals were forwarded for technical evaluation to the IAEA Waste Safety Standards Committee and the IAEA Radiation Safety Standards Committee. In parallel, similar discussions on the possibility for allowing contracting parties to the Paris Convention on Third Party Liability in the Field of Nuclear Energy[514] ("the Paris Convention") to also exclude such installations and reactors from the scope of application of the Paris Convention were taking place under the auspices of the Organization for Economic Cooperation and Development (OECD) and the Nuclear Energy Agency (NEA).

[514] United Nations, *Treaty Series*, vol. 956, p. 264.

(*j*) Safeguards Agreements

During 2008, no new Safeguards Agreements pursuant to the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) entered into force. Cyprus,[515] Latvia[516] and Lithuania[517] acceded to the Safeguards Agreement between the non-nuclear-weapon States of the European Atomic Energy Community (Euratom), Euratom and the IAEA. A Safeguards Agreement pursuant to the NPT was signed by Montenegro but had not entered into force as of December 2008. A Safeguards Agreement with Qatar[518] pursuant to the NPT was approved by the IAEA Board of Governors. In addition, an agreement with India[519] for the application of safeguards to civilian nuclear facilities was approved by the Board of Governors.

In 2008, Protocols Additional to the Safeguards Agreements between the IAEA and Guatemala[520] and Singapore[521] entered into force. In addition, Cyprus,[522] Latvia[523] and Lithuania[524] acceded to the Protocol Additional to the Safeguards Agreement between the non-nuclear-weapon States of Euratom, Euratom and the IAEA. Additional Protocols were signed by Cote d'Ivoire, Iraq and Montenegro but had not entered into force as of December 2008. Additional Protocols with Lesotho, Swaziland and Zambia were approved by the IAEA Board of Governors in 2008, but were not signed.

9. United Nations Industrial Development Organization

(a) Constitutional matters

With the accession of Samoa to the Constitution of the United Nations Industrial Development Organization,[525] 173 States were members of the United Nations Industrial Development Organization (UNIDO) by the end of 2008.

(*b*) Agreements and other arrangements concluded in 2008

(i) *States*

a. Cameroon and the European Community (EC)

European Community contribution agreement signed by the United Nations Industrial Development Organization, the Government of the Republic of Cameroon and the

[515] IAEA document INFCIRC/193/Add.19.

[516] IAEA document INFCIRC/193/Add.21.

[517] IAEA document INFCIRC/193/Add.17.

[518] IAEA document INFCIRC/747.

[519] The Agreement was signed on 2 February 2009.

[520] IAEA document INFCIRC/299/Add. 1.

[521] IAEA document INFCIRC/259/Add. 1.

[522] IAEA document INFCIRC/193/Add.2.

[523] IAEA document INFCIRC/193/Add.22

[524] IAEA document INFCIRC/193/Add.l8.

[525] United Nations, *Treaty Series*, vol. 1401, p. 3.

European Community, represented by the European Development Fund, regarding the "Pilot programme in support for upgrading, standardization and quality in Cameroon", signed on 16 and 23 April and 6 May 2008.

b. China

Memorandum of understanding between the United Nations Industrial Development Organization and the Department of International Cooperation, Ministry of Agriculture of China, on implementation of outcome 2.1 of the Spanish Millennium Development Goals Achievement Fund – heat-recovery in the coal-gangue brick sector, signed on 14 and 22 July 2008.

c. China and the Southern China Investment Promotion Centre (SCIPC)

Trust fund agreement between the United Nations Industrial Development Organization and the Government of People's Republic of China and the Southern China Investment Promotion Centre (SCIPC) regarding the implementation of a project entitled "Strengthening the Southern China Investment Promotion Centre for establishment of an Investment Promotion Office for Southern China and neighbouring provinces", signed on 24 April and 9 June 2008.

d. China and Sierra Leone

Memorandum of understanding between the United Nations Industrial Development Organization, the Government of the People's Republic of China and the Government of the Republic of Sierra Leone on setting up a small hydro-power plant on the Bankasoka River located in the Port Loko District, Sierra Leone, under the "Lighting up Rural Africa Programme", signed on 6 November 2008.

e. Croatia

Trust fund agreement between the United Nations Industrial Development Organization and the Ministry of Economy, Labour and Entrepreneurship, Republic of Croatia, regarding the implementation of a project entitled "Establishment of a regional network for corporate social responsibility competence for the CEE/SEE region", signed on 17 June and 16 July 2008.

f. Democratic People's Republic of Korea

Agreement between the United Nations Industrial Development Organization and the Ministry of Chemical Industry and the National Coordinating Committee for Environment of the Democratic People's Republic of Korea concerning the cancellation of the "Plan for terminal phase-out of CTC" and preparation of an alternative project for the phase-out of CTC at 2.8 Vinalon Complex and Siniju Chemical Fiber Factory, signed on 26 September 2008.

g. Lebanon

Memorandum of understanding on the occasion of the visit of Director-General Mr. Kandeh K. Yumkella to the Republic of Lebanon, 21 to 23 August 2008, signed by Mr. Kandeh K. Yumkella and Mr. Ghazi Zeaiter, Minister of Industry, on 23 August 2008.

h. India

Trust fund agreement between the United Nations Industrial Development Organization and the Ministry of Micro, Small and Medium Enterprises of the Government of the Republic of India regarding the implementation of a project entitled "National programme for technology upgrading of brass and bell metal industry/artisan enterprises in Khagra and other areas in the West Bengal and neighbouring states (Phase I)", signed on 8 September 2008.

i. Iran, Islamic Republic of

Joint declaration by Director-General Mr. Kandeh K. Yumkella, and Mr. Ali Akbar Mehrabian, Minister of Industries and Mines, regarding the enhancement of technical cooperation between UNIDO and the Islamic Republic of Iran, signed on 7 December 2008.

j. Italy

Trust fund agreement between the United Nations Industrial Development Organization and the Region of Tuscany (Italy) regarding the implementation of a project in Burkina Faso entitled "Upgrading agrofood value chains and opening of market channels for West African communities. Phase I: Burkina Faso", signed on 12 March 2008.

Joint communiqué of Director-General Mr. Kandeh K. Yumkella, Mr. Salif Diallo, Minister of State, Ministry of Agriculture, Water Resources and Fisheries, Burkina Faso, and Mr. Massimo Toschi, Minister of the Region of Tuscany responsible for international cooperation, regarding the programme "Upgrading agro-food value chains and opening the market channels for West African communities. Phase I: Burkina Faso", signed on 12 March 2008.

Trust fund agreement between the United Nations Industrial Development Organization and the Government of Italy regarding a Montreal Protocol project in Mexico entitled "National phase-out of MB– terminal project", signed on 11 July 2008.

Agreement between the United Nations Industrial Development Organization and the Government of the Italian Republic regarding the implementation of a project in Viet Nam entitled "SME cluster development", signed on 1 August 2008.

k. Lao People's Democratic Republic and the Asian Development Bank

Memorandum of understanding between the United Nations Industrial Development Organization, the Government of the Lao People's Democratic Republic and the Asian Development Bank on "Proposed technical assistance project for building Lao People's Democratic Republic's capacity to develop social economic zones", signed on 3 April 2008.

l. Mexico

Trust fund agreement between the United Nations Industrial Development Organization, the National Forestry Commission and the Government of the State of Veracruz de Ignacio de la Llave, Mexico, regarding the programme "Establishment of a bamboo skills development and demonstration centre in Huatusco-Veracruz", signed on 24 April and 1 May 2008.

m. Mozambique and the European Community (EC)

European Community contribution agreement between the United Nations Industrial Development Organization, the European Community and the Government of Mozambique regarding the implementation of the action entitled "Business environment support and trade facilitation project" , signed on 8 May 2008.

n. Nigeria

Administrative agreement between the United Nations Industrial Development Organization and the Government of Ebonyi State of Nigeria with regard to special purpose contributions to the Industrial Development Fund, signed on 1 February 2008.

o. Norway

Cost-sharing agreement between the United Nations Industrial Development Organization and the Norwegian Ministry of Foreign Affairs regarding the project entitled "Qualifying training-insertion of the youth in Côte d'Ivoire", signed on 8 December 2008.

p. Russian Federation

Agreement between the United Nations Industrial Development Organization and the Government of the Russian Federation on the Trust Fund for the UNIDO Centre for International Industrial Cooperation in the Russian Federation, signed on 11 and 16 December 2008.

q. South Africa

Trust fund agreement between the United Nations Industrial Development Organization and the Department of Trade and Industry of the Government of South Africa regarding the implementation of a project entitled "Comparative analysis of the South Africa motor industry development programme", signed on 20 March 2008.

Trust fund agreement between the United Nations Industrial Development Organization and the Department of Public Enterprises of the Government of South Africa regarding the implementation of a project entitled "Regional supplier benchmarking programme – Establishment of subcontracting and partnership exchange (SPX) centres in five countries in Southern Africa", signed on 25 July and 25 August 2008.

r. The Sudan

Trust fund agreement between the United Nations Industrial Development Organization and the Ministry of Investment, the Sudan, regarding the implementation of a project entitled "Investment Promotion and Technical Assistance Programme (ITAP) for the Sudan", signed on 10 and 17 April 2008.

Memorandum of agreement between the United Nations Industrial Development Organization and the Government of Southern Sudan (GOSS) regarding Youth Entrepreneurship Development (YED) through capacity-building and upgrading of the Malakal Vocational and Technical Training Centre (MVTC), Southern Sudan, signed on 15 April 2008.

Memorandum of agreement between the United Nations Industrial Development Organization and the Government of Southern Sudan (GOSS) regarding the project "Building industrial capacity in Southern Sudan", signed on 6 August 2008.

s. Switzerland

Letter of agreement between the United Nations Industrial Development Organization and the State Secretariat for Economic Affairs (SECO) concerning the project US/VIE/08/004 – Post WTO accession support to Viet Nam – TBT/SPS compliance capacity development related to key export sectors, signed on 23 June 2008.

t. Syrian Arab Republic

Memorandum of understanding on the occasion of the visit of Director-General Mr. Kandeh K. Yumkella to the Syrian Arab Republic, 23 to 25 August 2008, signed by Mr. Kandeh K. Yumkella and Mr. Fouad Issa Al-Jouni, Minister of Industry, on 24 August 2008.

(ii) *The United Nations, its programmes and offices, and the specialized agencies*

Memorandum of understanding concerning the provision and use of common services by the specialized agencies, commissions, funds and programmes of the United Nations in Uruguay , signed on 24 and 29 September, 2 and 6 October 2008.

One Plan 2006-2010 between the Government of the Socialist Republic of Viet Nam and the United Nations funds, programmes and agencies represented in Viet Nam, signed on 20 June 2008.

Memorandum of understanding between the specialized agencies, funds and programmes of the United Nations in the United Republic of Tanzania concerning the One UN joint programme on wealth creation, employment and economic empowerment, signed in January 2008.

a. Food and Agriculture Organization of the United Nations (FAO)

Project agreement improving the income generating potential of the oil palm in the West and Central African Region (Cameroon and Nigeria) between the United Nations Industrial Development Organization, the Intergovernmental Group on Oilseeds, Oils and

Fats, represented by the Food and Agriculture Organization of the United Nations, and the Common Fund for Commodities, signed on 12 September and 29 October 2008.

b. United Nations Development Programme (UNDP)

Memorandum of understanding between participating United Nations organizations and the United Nations Development Programme regarding the joint programme for capacity-building support to Zanzibar, signed in January 2008.

Memorandum of understanding between participating United Nations organizations, the United Nations Resident Coordinator and the United Nations Development Programme regarding the operational aspects of the One UN Coherence Fund for Uruguay, signed on 26 February 2008.

Memorandum of understanding between participating United Nations organizations, the United Nations Resident Coordinator and the United Nations Development Programme regarding the operational aspects of the Pakistan One Fund, signed on 17 June 2008.

Memorandum of understanding between participating United Nations organizations and the United Nations Development Programme regarding the operational aspects of the Darfur Community Peace and Stability Fund (DCPSF) in the Sudan, signed on 15 January 2008.

c. World Bank/International Development Association (IDA)

Exchange of letters between the United Nations Industrial Development Organization and the IDA/World Bank regarding a grant for the "Blue Nile start-up emergency project", signed on 24 January 2008.

Letter of agreement between the United Nations Industrial Development Organization, the IDA/World Bank and the Government of the Republic of the Sudan regarding the implementation of the project "Blue Nile start-up emergency project", signed on 17 March, 18 March and 15 July 2008.

Trust fund administration agreement between the United Nations Industrial Development Organization and the International Development Association concerning the multi-donor trust fund for trade-related assistance in Cambodia, signed on 19 November 2008.

d. World Food Programme (WFP)

Memorandum of understanding between the United Nations Industrial Development Organization and the United Nations World Food Programme (WFP) regarding the provision of services to UNIDO in the Democratic People's Republic of Korea, signed on 26 June 2008.

e. World Trade Organization (WTO)

Framework agreement on the standards and trade development facility between the World Trade Organization and the United Nations Industrial Development Organization, signed on 19 November 2008.

(iii) *Other intergovernmental organizations*

a. Agency for International Trade Information and Cooperation (AITIC)

Relationship agreement between the United Nations Industrial Development Organization and the Agency for International Trade Information and Cooperation, signed on 31 March and 25 April 2008.

b. Andean Community General Secretariat (SGCAN)

Memorandum of understanding between the United Nations Industrial Development Organization and the Andean Community General Secretariat, signed on 26 February and 13 May 2008.

c. European Community (EC)

European Community contribution agreement between the United Nations Industrial Development Organization and the European Community, represented by the European Commission, regarding the implementation of the action entitled "Upgrading of the technical and personnel capacity of the target Thai chemical-testing laboratories", signed on 25 July and 15 August 2008.

European Community contribution agreement between the United Nations Industrial Development Organization and the European Community, represented by the European Commission, regarding the implementation of the action entitled "Trade capacity-building in Thailand through strengthening the capacities of testing laboratories for food and agricultural products", signed on 22 November and 5 December 2008.

European Community contribution agreement between the United Nations Industrial Development Organization and the European Community, represented by the Commission of the European Communities, regarding the implementation of the action entitled "Global identification and evaluation of polluted sites", signed on 3 and 4 December 2008.

European Community contribution agreement between the United Nations Industrial Development Organization and the European Community, represented by the Commission of the European Communities, regarding the implementation of the action entitled "Helping Vietnamese SMEs adapt and adopt CSR for improved linkages with global supply chains in sustainable production", signed on 3 and 9 December 2008.

European Community contribution agreement between the United Nations Industrial Development Organization and the European Community, represented by the delegation of the European Community in Côte d'Ivoire, regarding the implementation of the action entitled "Project for restructuring the cotton fibre classification system in Côte d'Ivoire", signed on 18 December 2008.

European Community contribution agreement between the United Nations Industrial Development Organization and the European Community, represented by the Commission of the European Communities, regarding the implementation of the action entitled "Survey of enterprises in selected ACP countries", signed on 18 and 19 December 2008.

d. International Bureau of Weights and Measures (BIPM), International Organization of Legal Metrology (OIML)

Memorandum of understanding on cooperation between the United Nations Industrial Development Organization, the International Bureau of Weights and Measures (BIPM) and the International Organization of Legal Metrology (OIML), signed on 3 December 2008.

(iv) *Other entities*

a. Spanish Agency for International Development Cooperation (AECID)

Memorandum of agreement between the United Nations Industrial Development Organization and the Spanish Agency for International Development Cooperation regarding the implementation of the project entitled "Development of female entrepreneurship in the agro-industrial sector in Morocco", signed on 6 May and 19 June 2008.

b. Agence Française de Développement

Financial agreement No.CZZ1315.01X between the United Nations Industrial Development Organization and the French Development Agency concerning the project "Strategic demonstration project for accelerated conversion of CFC chillers in five African countries (Cameroon, Egypt, Namibia, Nigeria and Sudan), AFROC", signed on 26 August 2008.

c. Australian Agency for International Development (AusAID)

Trust fund agreement between the United Nations Industrial Development Organization and the Australian Agency for International Development (AusAID) regarding the implementation of a project in Kenya entitled "Recovery of MSMEs through installation of a community power centre (CPC) for productive application", signed on 10 and 11 September 2008.

d. China Clean Development Mechanism Fund Management Centre

Memorandum of understanding between the United Nations Industrial Development Organization and the China Clean Development Mechanism Fund Management Centre on cooperation with regard to climate change and the clean development mechanism, signed on 6 November 2008.

e. ComMark Trust

Trust fund agreement between the United Nations Industrial Development Organization and the ComMark Trust regarding the implementation of a project in Malawi entitled "Capacity-building for aflatoxin management and control in groundnuts and paprika in Malawi", signed on 15 September and 3 October 2008.

f. Dizayn Group Teknoloji Arastirma ve Gelistirme Limited Sirketi (Dizayn Teknoloji)

Memorandum of understanding between the United Nations Industrial Development Organization, represented by Mr. Mustafa Hatipoglu, and Dizayn Group Teknoloji

Arastirma ve Gelistirme Limited Sirketi (Dizayn Teknoloji), represented by Mr. Ibrahim Mirmahmutogullari, General Manager, concerning the development of a hydrogen gas permeation test apparatus for piping, signed on 29 May and 17 November 2008.

g. Gesellschaft fuer Technische Zusammenarbeit (GTZ)

Trust fund agreement between the United Nations Industrial Development Organization and the Deutsche Gesellschaft fuer Technische Zusammenarbeit (GTZ) regarding the project "Making renewable energy markets work for Africa", signed on 19 and 31 March 2008.

h. Hewlett-Packard Company

Memorandum of understanding between United Nations Industrial Development Organization and Hewlett-Packard Company, signed on 7 May 2008.

i. Istanbul Deniz Otobusleri A.S. (IDO)

Memorandum of understanding between the United Nations Industrial Development Organization represented by the International Centre for Hydrogen Energy (ICHET) and Istanbul Deniz Otobusleri A.S. (IDO), signed on 15 and 21 October 2008 and 17 November 2008.

j. Istanbul Enerji Sanayi Ve Ticaret A.S, Hidrosen Arastirma-Gelistirme Merkezi Sanayi Ve Ticaret Ltd. Sti, Temsan

Memorandum of understanding between the United Nations Industrial Development Organization, represented by the International Centre for Hydrogen Energy (ICHET), and Istanbul Enerji Sanayi Ve Ticaret A.S and Hidrosen Arastirma-Gelistirme Merkezi Sanayi Ve Ticaret Ltd. Sti and Temsan, signed on 17, 20 and 21 November and 15 December 2008.

k. Itaipu Binacional, Centrais Elétricas Brasileiras S.A.

Memorandum of understanding between the United Nations Industrial Development Organization, Itaipu Binacional and Centrais Elétricas Brasileiras S.A., signed on 4 December 2008.

l. Joint Stock Company "Moscow Committee on Science and Technologies"

Joint Stock Company "Moscow Committee on Science and Technologies" Trust fund agreement between the United Nations Industrial Development Organization and the Joint Stock Company "Moscow Committee on Science and Technologies" regarding the implementation of a project in Moscow entitled "Identification, assessment and development of 'atlas' and the database of water-related best available technologies", signed on 27 March and 26 April 2008.

m. Norwegian Agency for Development Cooperation (Norad)

Administrative agreement for project funding between the United Nations Industrial Development Organization and the Norwegian Agency for Development Cooperation for the project entitled "Guide to private standards", signed on 23 January and 7 February 2008.

Administrative agreement for project funding between the United Nations Industrial Development Organization and the Norwegian Agency for Development Cooperation regarding the project "Technical assistance to business registration reform in Viet Nam", signed on 7 March 2008.

Administrative agreement for project funding between the United Nations Industrial Development Organization and the Norwegian Agency for Development Cooperation regarding the project "Facilitating Pakistan's capacity to integrate into global trade – six to eight months bridging", signed on 25 and 28 March 2008.

Administrative agreement for project funding between the United Nations Industrial Development Organization and the Norwegian Agency for Development Cooperation regarding the project "Promotion of GLOBALGAP standards in Uganda", signed on 14 and 30 October 2008.

Administrative agreement for project funding between the United Nations Industrial Development Organization and the Norwegian Agency for Development Cooperation regarding the project "UNIDO – Trade Compliance Report", signed on 14 and 30 October 2008.

Administrative agreement for project funding between the United Nations Industrial Development Organization and the Norwegian Agency for Development Cooperation regarding the project "Re-visiting UNIDO's trade capacity-building approach", signed on 14 and 30 October 2008.

n. PREPARE Network

Memorandum of understanding between the United Nations Industrial Development Organization and the PREPARE Network, signed on 30 June and 23 July 2008.

o. Small and Medium Enterprises Development Agency of Nigeria

Trust fund agreement between the United Nations Industrial Development Organization and the Small and Medium Enterprises Development Agency of Nigeria regarding the project "SPX Nigeria – Assistance in establishing an industrial subcontracting and partnership exchange in Nigeria" , signed on 21 February 2008.

p. Turkish International Cooperation and Development Agency (TIKA)

Cooperation agreement between the United Nations Industrial Development Organization and the Turkish International Cooperation and Development Agency, signed on 16 June 2008.

q. WAITRO

Memorandum of cooperation between the United Nations Industrial Development Organization and the World Association of Industrial and Technological Research Organizations, signed on 16 May 2008.

r. Arab Science and Technology Foundation (ASTF)

Memorandum of understanding between the United Nations Industrial Development Organization and the Arab Science and Technology Foundation (ASTF), Sharjah, United Arab Emirates, signed on 3 December 2008.

10. 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 Ukraine's accession package during February 2008. The Ukraine became the 152nd member of WTO on 16 May 2008. The accession package of Cape Verde was adopted by the WTO at the General Council in December 2007. On 23 July 2008 Cape Verde became the 153rd member of WTO.

(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
Comoros (Union of the)
Equatorial Guinea
Ethiopia
Iran (Islamic Republic of)
Iraq
Kazakhstan
Lao People's Democratic Republic
Lebanon
Liberia
Libyan Arab Jamahiriya
Montenegro
Russian Federation
Samoa
Sao Tome and Principe
Serbia
Seychelles
The Sudan
Tajikistan
Ukraine
Vanuatu[524]
Yemen

[526] The final meeting of the Working Party on the Accession of Vanuatu was held on 29 October 2001. The accession package has not yet been forwarded to the General Council.

(iii) *Remaining accessions*

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;

– 21 Working Parties have held their first meeting;

– 19 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, which is a document that lays down the basis for the draft Working Party Report, has been prepared for 17 applicants.

A Working Party has not yet been established to examine a request for accession from the Syrian Arab Republic.[527]

(*b*) Dispute settlement

During 2008, 19 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:

– Australia – Measures Affecting the Importation of Apples from New Zealand;[528]

– Thailand – Customs and Fiscal Measures on Cigarettes from the Philippines;[529]

– European Communities and its member States – Tariff Treatment of Certain Information Technology Products.[530]

During 2008, the Dispute Settlement Body adopted Panel Reports and Appellate Body reports in the following cases:

– United States – Continued Suspension of Obligations in the EC – Hormones Dispute/ Canada – Continued Suspension of Obligations in the EC – Hormones Dispute (Appellate Body and Panel reports);[531]

– European Communities – Anti-Dumping Measure on Farmed Salmon from Norway (Panel report);[532]

– Mexico – Definitive Countervailing Measures on Olive Oil from the European Communities (Panel report);[533]

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[527] Documents WT/ACC/SYR/1, 2 and 3.

[528] WT/DS367.

[529] WT/DS371.

[530] WT/DS375, WT/DS376, WT/DS377.

[531] WT/DS320/321.

[532] WT/DS337.

[533] WT/DS341.

– United States – Measures Relating to Shrimp from Thailand and United States – Customs Bond Directive for Merchandise Subject to Anti-Dumping/Countervailing Duties (Appellate Body and Panel reports);[534]
– United States – Final Dumping Measures on Stainless Steel from Mexico (Appellate Body and Panel reports);[535]
– India – Additional and Extra-Additional Duties on Imports from the United States (Appellate Body and Panel reports).[536]

During the period under review, the General Council granted the following waivers from obligations under the WTO Agreements, which are still in effect.

MEMBER	TYPE	DECISION OF	EXPIRY	DOCUMENT
Argentina	Introduction of Harmonized System 1996 changes into WTO Schedules of Tariff Concessions – Extension of Time-Limit	31 July 2008	30 April 2009	WT/L/733
Panama	Introduction of Harmonized System 1996 changes into WTO Schedules of Tariff Concessions – Extension of Time-Limit	31 July 2008	30 April 2009	WT/L/734
Argentina, Australia, Brazil, China, Costa Rica, Croatia, El Salvador, European Communities, Iceland, India, Republic of Korea, Mexico, New Zealand, Nicaragua, Norway, Chinese Taipei, Thailand, United States of America and Uruguay	Introduction of Harmonized System 2002 Changes into WTO Schedules of Tariff Concessions	18 December 2008	31 December 2009	WT/L/744

[534] WT/DS34/345.
[535] WT/DS344.
[536] WT/DS360.

MEMBER	TYPE	DECISION OF	EXPIRY	DOCUMENT
Argentina; Australia; Brazil; Canada; Costa Rica; Croatia; Dominican Republic; El Salvador; European Communities; Guatemala; Honduras; Hong Kong, China; India; Israel; Korea; Macao, China; Malaysia; Mexico; New Zealand; Nicaragua; Norway; Pakistan; Singapore; Switzerland; Thailand; United States of America and Uruguay	Introduction of Harmonized System 2007 Changes into WTO Schedules of Tariff Concessions	18 December 2008	31 December 2009	WT/L/745
European Communities	Application of autonomous preferential treatment to Moldova	7 May 2008	31 December 2013	WT/L/722
Senegal	Minimum values in regard to the Agreement on the Implementation of article VII of the General Agreement on Tariffs and Trade 1994	31 July 2008	30 June 2009	WT/L/735

11. World Intellectual Property Organization

In 2008, World Intellectual Property Organization (WIPO) continued its activities on the implementation of substantive work programs in three main areas: cooperation with member States for development activities, intellectual property treaty formulation and norm-setting, and the international registration of intellectual property rights.

(*a*) Cooperation for development activities

In 2008, the WIPO Technical Assistance and Capacity Building (TACB) activities continued to be directed towards the integration of Intellectual Property (IP) in national development policies and programs in accordance with WIPO 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 (IGOs) and non-governmental organizations (NGOs) 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 intellectual property (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 (IT); Genetic Resources, Traditional Knowledge and Folklore (TKF) and protection of traditional cultural expressions (TCEs); Small and Medium-Sized Enterprises (SMEs); and the establishment of collective management societies.

In 2007, the WIPO General Assembly adopted the recommendations for action on the 45 agreed proposals submitted by the Provisional Committee on Proposals Related to a WIPO Development Agenda (PCDA). The General Assembly also decided to immediately implement 19 proposals identified by the Chair of the PCDA in consultation with the member States and the Secretariat, and to establish a Committee on Development and Intellectual Property (CDIP). The Committee is composed of the member States of WIPO and open to the participation of all accredited IGOs and NGOs. In line with its mandate, the CDIP submitted to the WIPO General Assembly in 2008 a report on its first and second sessions respectively held in March and July 2008, during which the Rules of Procedures of the CDIP were adopted, the activities to be implemented under the adopted recommendations were reviewed and discussed, the outcome of informal consultations initiated between the two sessions on strategies and activities as well as the necessary mechanisms for coordinating the work of the Committee with other relevant WIPO bodies were considered.

(*b*) Norm-setting activities

One of the principal tasks of WIPO is to promote the harmonization of intellectual property laws, standards and practices among its member States 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)*

The Standing Committee on the Law of Patents (SCP), at its twelfth session held in June 2008, based its discussions on the report on the international patent system aiming at providing a frame of the current situation of the international patent system and attempting 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.

Although constructive discussions were held on the future work plan related to the draft of the Substantive Patent Law Treaty (SPLT), the debate within the SCP revealed that some existing differences on the harmonization of national patent laws could not yet be resolved. In line with the recommendations of the Committee, a "Conference on Intellectual Property and Global Challenges" will be held in July 2009, in the context of discussing a work program for the SCP. The Conference will address issues relating to the interface of intellectual property with other areas of public policy, notably health, environment, climate change, and food security, and serve as a global forum to discuss issues and solutions to some of the major challenges that the world faces today in the area of IP.

(ii) *Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications (SCT)*

The Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications (SCT) 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. The Committee also continued to work on issues identified at its twentieth session held in December 2008, in particular, on grounds for refusal of trademarks, technical and procedural aspects relating to certification and collective marks, possible areas for convergence on industrial design law and practice, and article 6 *ter* of the Paris Convention for the Protection of Industrial Property.[537]

(iii) *Standing Committee on Copyright and Related Rights (SCCR)*

Since the last seven sessions held from November 1998 to November 2008, the project to establish a modernized and balanced standard for the international protection of broadcasting and cablecasting organizations has been dealt with by the Standing Committee on Copyright and Related Rights (SCCR) without interruption and in line with the Development Agenda. These prolonged discussions were mainly due to divergences and deferring positions which eventually led the Committee to conclude that, despite all the efforts made to converge to a Diplomatic Conference on the protection of the rights of broadcasting organizations, the present situation was not favorable to continue a never-ending debate as there were no substantive grounds for reaching a common agreement. The SCCR concluded that the discussions should therefore be ended by a clear and definitive decision including a timetable for later revisiting and reconsidering the matter.

(*c*) International registration activities

(i) *Patents*

The number of international patent application filings grew by 2.3 per cent in 2008, to 163,600 applications. While the growth rate is modest, as compared to an average 9.3 per cent

[537] United Nations, *Treaty Series,* vol. 828, p. 307.

growth rate in the previous three years, the total number of international patent applications filed in 2008 represents the highest number of applications received under the Patent Cooperation Treaty (PCT)[538] in a single year. The largest number of international applications filed originated from applicants of the United States of America (53,521 applications).

In 2008, Sao Tome and Principe adhered to the Patent Cooperation Treaty, bringing the total number of contracting parties to 140.

(ii) *Trademarks*

In 2008, the volume of registration activity under the Madrid system continued to increase. The number of 40,985 of international registrations reached the highest ever recorded in one year under the Madrid system, based on a growth of 6.5 per cent, as compared to 2007.

In 2008, with the adherence of Bosnia Herzegovina, Ghana, Madagascar and Sao Tome and Principe to the Madrid Protocol,[539] the number of contracting parties rose to 78.

(iii) *Industrial designs*

In 2008, the Secretariat recorded 1,523 registrations of industrial designs. The number of designs contained in those registrations was 7,920.

During the year under review, Bosnia and Herzegovina, Denmark, Ghana, Lithuania, Sao Tome and Principe, the Syrian Arab Republic and the African Intellectual Property Organization (OAPI) became party to the Geneva Act of the Hague Agreement,[540] bringing the total number of contracting parties to 32.

(iv) *Appellations of origin*

In 2008, the Secretariat recorded three new appellations of origin in the International Register, which brought to 813 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).[541] The total number of contracting parties to the Lisbon Agreement is 26.

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[538] United Nations, *Treaty Series*, vol. 1160, p. 231.

[539] Madrid Agreement concerning the international registration of marks. United Nations, *Treaty Series*, vol. 828, p. 391.

[540] Geneva Act of the Hague Agreement concerning the international registration of industrial designs (with regulations). United Nations, *Treaty Series*, vol. 2279, p. 31.

[541] Lisbon Agreement for the protection of appellations of origin and their international registration. United Nations, *Treaty Series*, vol. 923, p. 89.

(*d*) 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 (IGC) at its twelfth and thirteenth sessions, held respectively in February and in October 2008, reviewed the progress made on its substantive agenda particularly with the contribution of the WIPO Voluntary Fund and the further strengthening of the indigenous consultative forum and the indigenous panels which form part of the IGC progress, as well as the participation of various intergovernmental organizations.

(ii) *The WIPO Arbitration and Mediation Center*

The WIPO Arbitration and Mediation Center ("the Center") has been involved in the development of various tailor-made procedures. The most prominent example is the Uniform Domain Name Dispute Resolution Policy (UDRP). The Center has also developed a set of dispute avoidance and resolution best practices for "Application Service Providers" in addition to a "Keyword Dispute Resolution Dispute Service" provided to resolve disputes that may arise concerning the registration of keywords. On 18 September 2008, the WIPO Expedited Arbitration Rules for the Association of International Collective Management of Audiovisual Works (AGICOA), developed by the Center and tailored to the specific needs of AGICOA rights holders' disputes, entered into force.

The Center has identified a separate panel of highly qualified and recognized copyright and entertainment law arbitrators from various jurisdictions and it has also carried out some 100 arbitrations and 80 cases of mediation proceedings, processed over 25,000 disputes in the area of domain names. 14,000 of those were received under the UDRP, 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*[542]

In 2008, 52 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 2008.

- Convention Establishing the World Intellectual Property Organization: 0 (184);
- Paris Convention for the Protection of Industrial Property: 1 (173);
- Berne Convention for the Protection of Literary and Artistic Works: 1 (164);
- Patent Cooperation Treaty: 1 (140);

[542] For the status of the treaties listed in this section, see the WIPO website at http://www.wipo.int/treaties/en/summary.jsp.

- Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks: 4 (78);
- Trademark Law Treaty: 3 (43);
- Patent Law Treaty: 2 (19);
- Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods: 0 (35);
- Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks: 1 (83);
- Locarno Agreement Establishing an International Classification for Industrial Designs: 0 (49);
- Vienna Agreement Establishing an International Classification of the Figurative Elements of Marks: 1 (25);
- WIPO Copyright Treaty: 4(68);
- WIPO Performances and Phonograms Treaty: 6 (68);
- Singapore Treaty on the Law of Trademarks: 8 (12);
- Lisbon Agreement for the Protection of Appellations of Origin and their International Registration: 0 (26);
- Strasbourg Agreement Concerning the International Patent Classification: 1 (59);
- Nairobi Treaty on the Protection of the Olympic Symbol: 1 (47);
- Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure: 4 (72);
- Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations: 1 (91);
- Geneva Act of the Hague Agreement Concerning the International Registration of Industrial Designs: 7 (56);
- Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite: 3 (34);
- Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms: 0 (76);
- International Convention for the Protection of New Varieties of Plants (UPOV): 3 (67).

12. International Fund for Agricultural Development

(*a*) International Fund for Agricultural Development's (IFAD's) 30th Anniversary

The year 2008 marked IFAD 30 years of activity. The Fund was established with the objective of mobilising additional resources to be made available for agricultural development in developing member States. At its anniversary, the Fund renewed its commitment to its mandate and to enabling rural poor to overcome poverty.

(*b*) Membership

The Commonwealth of the Bahamas became a member of IFAD in 2008. The application for membership presented by the Commonwealth of the Bahamas was approved by Resolution 146/XXXI of the Governing Council at its thirty-first session (13-14 February 2008).

(*c*) Cooperation agreements and memoranda of understanding and other agreements

(i) *Memorandum of Understanding with the African Development Bank and the African Development Fund*

During the thirty-first session of the Governing Council (13-14 February 2008), the President of IFAD and the President of the African Development Bank signed a Memorandum of Understanding (EB 2008/93/INF.2). The purpose of the Memorandum was to facilitate and intensify the relationship between the parties thereto in matters of common interest and to broaden it by establishing a strategic partnership. The text of this Memorandum was submitted for information at the April session of the Executive Board.

(ii) *Memorandum of understanding between FAO, IFAD, WFP and the Alliance for a Green Revolution in Africa (AGRA)*

On 4 June 2008, IFAD entered into an agreement with the Food and Agriculture Organization of the United Nations (FAO), the World Food Programme (WFP) and the Alliance for a Green Revolution in Africa (AGRA) for the purpose of developing a strategic alliance to help African countries in their efforts to achieve a green revolution aimed at reducing/eradicating hunger and improving the food security and incomes of African farmers and rural households (EB 2008/94/R.37).

(iii) *Agreement concerning the hosting of the Secretariat of the International Land Coalition*

During the ninety-fifth Session of the Executive Board (15-17 December 2008) an Agreement concerning the hosting of the Secretariat of the International Land Coalition (ILC) in Headquarters was signed between IFAD and the Coalition Council of the International Land Coalition. The Agreement defined IFAD hosting arrangements of the Secretariat of the ILC for a limited period of time (EB 2008/95/INF.3).

(iv) *Amendments of supervision arrangements*

In line with the provisions of the IFAD Policy on Supervision and Implementation Support approved by the Executive Board in December 2006, the Fund has been progressively increasing the number of projects under its direct supervision and implementation support. The Executive Board at its ninety-fourth Session (10-11 September 2008) approved a change in the supervision arrangements for 56 projects (EB 2008/94/R.24), whereby the cooperating

institutions were replaced by direct IFAD supervision. The respective loan agreements were amended and the appointments of the cooperating institutions concerned, terminated.

(v) *Framework Agreement with the UNDP*

Further to the 1987 MOU, a Framework Agreement was signed on 30 September 2008 between IFAD and the United Nations Development Programme (UNDP) whereby the latter undertook to assist IFAD in the provision of necessary office space within UNDP premises and administrative services needed for establishing Country Offices in certain of its member States.

(*d*) Others

(i) *Revision of the General Conditions for Agricultural Development Financing*

The Office of the General Counsel, in collaboration with the Programme Management Department and the Finance and Administration Department, carried out a comprehensive revision of the model financing agreement and the General Conditions for Agricultural Development Financing (the "General Conditions"). The documents (EB 2008/95/R.50) were presented to the Board at its ninety-fifth session (15-17 December 2008) during which it was proposed that an informal seminar be held prior to consideration thereof at the next Executive Board session.

(ii) *New Small Grant Agreements and Procedures*

In order to streamline IFAD legal instruments and reduce the time necessary for processing and implementing agreements, a new Small Grant Agreement model was developed, together with a new procedure for clearance and approval of grants and preparation of grant agreement. The new Small Grant Procedure was approved on 29 October 2008 through PB/2008/20 and applies to Grant Agreement below 200,000 USD.

(iii) *Administrative procedures for IFAD Country Office*

Procedures have been developed for administering IFAD Country Offices. The procedures clarify the roles and responsibilities of the Country Presence Initiatives and the various units of IFAD Headquarters (PB/2008/05).

(iv) *Guidelines for Project Design, Guidelines for Quality Enhancement for Project Design and Guidelines for Quality Assurance*

As of 2 January 2008, project designs have to adhere to the approved Guidelines for Project Design, Guidelines for Quality Enhancement for Project Design and the Guidelines for Quality Assurance. The Guidelines include far reaching changes in IFAD internal way of undertaking projects and provide the guidance framework for: a) designing projects; b) internal review of project design; and c) quality assurance of project design.

13. Organization for the Prohibition of Chemical Weapons

(*a*) Membership

During 2008, two States, Guinea-Bissau and Lebanon, became States parties to the Chemical Weapons Convention ("the Convention" or "CWC").[543]

In addition, the Convention entered into force in the Republic of the Congo. At the end of the year the number of States parties stood at 185.

(*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 States 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 States parties of the OPCW approved such requests for extensions of the deadline made by possessor State parties.

The Second Review Conference, held in 2008,[544] reaffirmed that complete destruction of chemical weapons, and conversion or complete destruction of chemical weapons production facilities (CWPFs), is essential for the realisation of the object and purpose of the Convention. The Second Review Conference welcomed the statements of possessor States parties reiterating their commitment to meeting the final, extended deadlines established under the Convention by the eleventh session of the Conference. The Second Review Conference noted the significant progress made so far by possessor States parties in the destruction of chemical weapons and commended the progress made by those States parties which are close to achieving complete destruction of their stockpiles. The Second Review Conference noted that by 1 April 2008, over 38 per cent of the total stockpiles of 70.000 tonnes of Category 1 chemical weapons initially declared by States parties had been destroyed. However, the Second Review Conference expressed its concern that more than 60 per cent of stockpiles still remained to be destroyed.

(*c*) Legal status, privileges and immunities and international agreements

During 2008, the Organization for the Prohibition of Chemical Weapons (OPCW) continued to negotiate bilateral privileges and immunities agreements with States parties pursuant to paragraph 50 of article VIII of the Convention. Five agreements on privileges

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[543] Convention on the Prohibition of the Development, Production and Stockpiling and Use of Chemical Weapons and on their Destruction. United Nations, *Treaty Series*, vol. 1974, p. 45.

[544] Described further in section (d) below.

and immunities were signed during the year under review. The first agreement, concluded with Serbia, was signed on 7 March 2008. Two other agreements, concluded with Mauritius and El Salvador, were signed on 3 July 2008. The fourth agreement, concluded with Ecuador, was signed on 17 July 2008, and the fifth agreement, concluded with Poland, was signed on 5 August 2008. In addition, one agreement was negotiated with another State party and approved by the Executive Council and is to be signed in due course.

Pursuant to paragraph 3 of part III of the Verification Annex to the Convention, each State party must conclude a facility agreement with the OPCW for each facility or plant site declared and subject to on-site inspections.[545]

In 2008, one facility agreement regarding on-site inspections at a Schedule I[546] protective purposes facility was signed on 25 September 2008 between the OPCW and Sweden, and entered into force on the same day.

During the period under review, three facility agreements regarding on-site inspections at Schedule 2 facilities were signed. In addition, three facility agreements regarding on-site inspections at converted chemical weapons production facilities were signed. These six facility agreements between the OPCW and the United Kingdom were signed on 30 October 2008 and entered into force on the same day.

During the period covered by this review, two facility agreements regarding on-site inspections at small-scale facilities were signed. The first was signed on 30 October 2008 between the OPCW and the United Kingdom, and the second was signed on 1 December 2008 between the OPCW and Canada. Both facility agreements entered into force on the day of their signature.

A facility agreement regarding on-site inspections at a chemical weapons destruction facility was signed between the OPCW and Libya on 3 December 2008 and entered into force on the same day.

The OPCW concluded a number of memoranda of understanding and grant agreements relating to the implementation of activities by States parties and the Technical Secretariat during 2008.

(*d*) Review of the Chemical Weapons Convention

The Second Special Session of the Conference of the States parties to review the Operation of the Chemical Weapons Convention ("Second Review Conference") was convened from 7 to 18 April 2008. At the Second Review Conference, all States parties renewed their strong commitment to the goals of the Chemical Weapons Convention, reiterated

[545] During an initial inspection at a facility or plant site, one of the tasks of an OPCW inspection team is to begin work on a facility agreement, which will govern all future inspections at that facility or plant site. Such agreements are required for all chemical weapons-related facilities, facilities producing Schedule 1 chemicals, and Schedule 2 plant sites. With respect to the last category, however, the Secretariat and the inspected State party can agree that an agreement is not necessary for a particular site. For plant sites producing Schedule 3 chemicals or unscheduled discrete organic chemicals, a facility agreement is not normally needed, although the inspected State Party may request one.

[546] For the purpose of implementing the Chemical Weapons Convention, toxic chemicals which have been identified for the application of verification measures are listed in Schedules contained in the Annex on Chemicals.

the critical importance of such an instrument, and reaffirmed the essential contribution such a Convention makes to confidence-building and to cooperation among States parties, as well as to their own national security. States parties affirmed that the Convention sets new standards for both disarmament and non-proliferation notably through its non-discriminatory and multilateral verification regime.

During this session, the Conference considered, among other issues, the role of the Chemical Weapons Convention in enhancing international peace and security, the importance of the destruction of declared chemical weapons stockpiles within the applicable deadlines, the importance of achieving universal adherence to, and full and prompt implementation of the Convention, and the relevance of the provisions of article X of the Convention for assistance and protection against chemical weapons. Additionally, the Second Review Conference stressed the importance of the provisions of article XI on the economic and technological development of States parties, and recalled that the full, effective and non-discriminatory implementation of article XI is essential for the realisation of the goals of the Convention.

(*e*) OPCW legislative assistance activities

Throughout 2008, the Technical Secretariat of the OPCW continued to render assistance, upon request, to States parties that had yet to adopt legislative and other measures to implement their obligations under the Convention.

In its implementation support efforts, the Technical Secretariat of the OPCW acted in accordance with subparagraph 38 (e) of article VIII of the Convention and the provisions of the plan of action regarding the implementation of article VII obligations adopted by the Conference at its eighth session ("the Action Plan") (C-8/DEC.16. dated 24 October 2003) as well as other decisions regarding the implementation of article VII obligations (C-12/DEC.9 of 9 November 2007, C-10/DEC.16 of 11 November 2005 and C-M/DF.C.4 of 6 December 2006). These decisions focussed on, amongst other things, the obligations of States parties to designate or establish a national authority to serve as a national focal point for effective liaison with the OPCW and other States parties, as required by article VII, paragraph 4 of the Convention, and to take the steps necessary to enact national implementing legislation, including penal legislation and administrative measures to implement the Convention, as required by article VII, paragraph I, of the Convention.

In addition to assistance to individual States parties, a number of national, sub-regional, regional workshops and training courses were held for national authorities, parliamentarians and other national bodies involved in the implementation of the Convention. These events dealt with matters such as legislative drafting, declarations, enactment of national implementing legislation, etc.

The Technical Secretariat also reviewed and commented on 28 drafts of measures to implement the Convention transmitted by 16 States parties. It also provided assistance in identifying areas in which legislation or regulations were required and, in this regard, offered drafting guidance to 8 States parties.

The Secretariat continued to maintain informal working contacts with States parties with which it had built a relationship through technical assistance visits and consultations,

in order to identify additional needs for assistance, to follow up on assistance already provided and to coordinate future assistance activities.

In the course of 2008, two further States parties designated or established their national authority bringing the number of States parties having fulfilled the requirement of article VII (4) CWC to 177 (96%). In the same year, five further States parties had notified the OPCW that they had adopted measures covering all key areas of the Action Plan. The number of States having legislation covering all these key areas therefore increased to 83 (45 per cent).

Chapter IV

TREATIES CONCERNING INTERNATIONAL LAW CONCLUDED UNDER THE AUSPICES OF THE UNITED NATIONS AND RELATED INTERGOVERNMENTAL ORGANIZATIONS

A. Treaties concerning international law concluded under the auspices of the United Nations

1. Additional Protocol to the Convention on the Contract for the International Carriage of Goods by Road (CMR) Concerning the Electronic Consignment Note. Geneva, 20 February 2008*

The Parties to this Protocol,

Being Parties to the Convention on the Contract for the International Carriage of Goods by Road (CMR), done at Geneva on 19 May 1956,

Desirous of supplementing the Convention in order to facilitate the optional making out of the consignment note by means of procedures used for the electronic recording and handling of data,

Have agreed as follows:

Article 1. Definitions

For the purposes of this Protocol,

"Convention" means the Convention on the Contract for the International Carriage of Goods by Road (CMR);

"Electronic communication" means information generated, sent, received or stored by electronic, optical, digital or similar means with the result that the information communicated is accessible so as to be usable for subsequent reference;

"Electronic consignment note" means a consignment note issued by electronic communication by the carrier, the sender or any other party interested in the performance of a contract of carriage to which the Convention applies, including particulars logically associated with the electronic communication by attachments or otherwise linked to the electronic communication contemporaneously with or subsequent to its issue, so as to become part of the electronic consignment note;

"Electronic signature" means data in electronic form which are attached to or logically associated with other electronic data and which serve as a method of authentication.

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* Adopted by the Inland Transport Committee of the Economic Commission for Europe at its 70th session held at Geneva from 19-21 February 2008.

Article 2. Scope and effect of the electronic consignment note

1. Subject to the provisions of this Protocol, the consignment note referred to in the Convention, as well as any demand, declaration, instruction, request, reservation or other communication relating to the performance of a contract of carriage to which the Convention applies, may be made out by electronic communication.

2. An electronic consignment note that complies with the provisions of this Protocol shall be considered to be equivalent to the consignment note referred to in the Convention and shall therefore have the same evidentiary value and produce the same effects as that consignment note.

Article 3. Authentication of the electronic consignment note

1. The electronic consignment note shall be authenticated by the parties to the contract of carriage by means of a reliable electronic signature that ensures its link with the electronic consignment note. The reliability of an electronic signature method is presumed, unless otherwise proved, if the electronic signature:

(*a*) is uniquely linked to the signatory;

(*b*) is capable of identifying the signatory;

(*c*) is created using means that the signatory can maintain under his sole control; and

(*d*) is linked to the data to which it relates in such a manner that any subsequent change of the data is detectable.

2. The electronic consignment note may also be authenticated by any other electronic authentication method permitted by the law of the country in which the electronic consignment note has been made out.

3. The particulars contained in the electronic consignment note shall be accessible to any party entitled thereto.

Article 4. Conditions for the establishment of the electronic consignment note

1. The electronic consignment note shall contain the same particulars as the consignment note referred to in the Convention.

2. The procedure used to issue the electronic consignment note shall ensure the integrity of the particulars contained therein from the time when it was first generated in its final form. There is integrity when the particulars have remained complete and unaltered, apart from any addition or change which arises in the normal course of communication, storage and display.

3. The particulars contained in the electronic consignment note may be supplemented or amended in the cases authorized by the Convention.

The procedure used for supplementing or amending the electronic consignment note shall make it possible to detect as such any supplement or amendment to the electronic consignment note and shall preserve the particulars originally contained therein.

Article 5. Implementation of the electronic consignment note

1. The parties interested in the performance of the contract of carriage shall agree on the procedures and their implementation in order to comply with the requirements of this Protocol and the Convention, in particular as regards:

(*a*) The method for the issuance and the delivery of the electronic consignment note to the entitled party;

(*b*) An assurance that the electronic consignment note retains its integrity;

(*c*) The manner in which the party entitled to the rights arising out of the electronic consignment note is able to demonstrate that entitlement;

(*d*) The way in which confirmation is given that delivery to the consignee has been effected;

(*e*) The procedures for supplementing or amending the electronic consignment note; and

(*f*) The procedures for the possible replacement of the electronic consignment note by a consignment note issued by different means.

2. The procedures in paragraph 1 must be referred to in the electronic consignment note and shall be readily ascertainable.

Article 6. Documents supplementing the electronic consignment note

1. The carrier shall hand over to the sender, at the latter's request, a receipt for the goods and all information necessary for identifying the shipment and for access to the electronic consignment note to which this Protocol refers.

2. The documents referred to in Article 6, paragraph 2 (g) and Article 11 of the Convention may be furnished by the sender to the carrier in the form of an electronic communication if the documents exist in this form and if the parties have agreed to procedures enabling a link to be established between these documents and the electronic consignment note to which this Protocol refers in a manner that assures their integrity.

Final provisions

Article 7. Signature, ratification, accession

1. This Protocol shall be open for signature by States which are signatories to or Parties to the Convention and are either members of the Economic Commission for Europe or have been admitted to the Commission in a consultative capacity under paragraph 8 of the Commission's terms of reference.

2. This Protocol shall be open for signature at Geneva from 27 to 30 May 2008 inclusive and after this date, at United Nations Headquarters in New York until 30 June 2009 inclusive.

3. This Protocol shall be subject to ratification by signatory States and open for accession by non-signatory States, referred to in paragraph 1 of this article, which are Parties to the Convention.

4. Such States as may participate in certain activities of the Economic Commission for Europe in accordance with paragraph 11 of the Commission's terms of reference and

which have acceded to the Convention may become Parties to this Protocol by acceding thereto after its entry into force.

5. Ratification or accession shall be effected by the deposit of an instrument with the Secretary-General of the United Nations.

6. Any instrument of ratification or accession, deposited after the entry into force of an amendment to this Protocol adopted in accordance with the provisions of Article 13 hereafter, shall be deemed to apply to the Protocol as modified by the amendment.

Article 8. Entry into force

1. This Protocol shall enter into force on the ninetieth day after five of the States referred to in article 7, paragraph 3, of this Protocol, have deposited their instruments of ratification or accession.

2. For any State ratifying or acceding to it after five States have deposited their instruments of ratification or accession, this Protocol shall enter into force on the ninetieth day after the said State has deposited its instrument of ratification or accession.

Article 9. Denunciation

1. Any Party may denounce this Protocol by so notifying the Secretary-General of the United Nations.

2. Denunciation shall take effect 12 months after the date of receipt by the Secretary-General of the notification of denunciation.

3. Any State which ceases to be Party to the Convention shall on the same date cease to be Party to this Protocol.

Article 10. Termination

If, after the entry into force of this Protocol, the number of Parties is reduced, as a result of denunciations, to less than five, this Protocol shall cease to be in force from the date on which the last of such denunciations takes effect. It shall also cease to be in force from the date on which the Convention ceases to be in force.

Article 11. Dispute

Any dispute between two or more Parties relating to the interpretation or application of this Protocol which the Parties are unable to settle by negotiation or other means may, at the request of any one of the Parties concerned, be referred for settlement to the International Court of Justice.

Article 12. Reservations

1. Any State may, at the time of signing, ratifying, or acceding to this Protocol, declare by a notification addressed to the Secretary-General of the United Nations that it does not consider itself bound by article 11 of this Protocol. Other Parties shall not be bound by article 11 of this Protocol in respect of any Party which has entered such a reservation.

2. The declaration referred to in paragraph 1 of this article may be withdrawn at any time by a notification addressed to the Secretary-General of the United Nations.

3. No other reservation to this Protocol shall be permitted.

Article 13. Amendments

1. Once this Protocol is in force, it may be amended according to the procedure defined in this article.

2. Any proposed amendment to this Protocol presented by a Party to this Protocol shall be submitted to the Working Party on Road Transport of the United Nations Economic Commission for Europe (UNECE) for consideration and decision.

3. The Parties to this Protocol shall make all possible efforts to achieve consensus. If, despite these efforts, consensus is not reached on the proposed amendment, it shall require, as a last resort, for adoption a two-thirds majority of Parties present and voting. A proposed amendment adopted either by consensus or by a two-thirds majority of Parties shall be submitted by the secretariat of the United Nations Economic Commission for Europe to the Secretary-General to be circulated for acceptance to all Parties to this Protocol, as well as to signatory States.

4. Within a period of nine months from the date on which the proposed amendment is communicated by the Secretary-General, any Party may inform the Secretary-General that it has an objection to the amendment proposed.

5. The proposed amendment shall be deemed to have been accepted if, by the end of the period of nine months foreseen in the preceding paragraph, no objection has been notified by a Party to this Protocol. If an objection is stated, the proposed amendment shall be of no effect.

6. In the case of a country which becomes a Contracting Party to this Protocol between the moment of notification of a proposal for amendment and the end of the nine-month period foreseen in paragraph 4 of this article, the secretariat of the Working Party on Road Transport of the Economic Commission for Europe shall notify the new State Party about the proposed amendment as soon as possible. The latter may inform the Secretary-General before the end of this period of nine months that it has an objection to the proposed amendment.

7. The Secretary-General shall notify, as soon as possible, all the Parties of objections raised in accordance with paragraphs 4 and 6 of this Article as well as of any amendment accepted according to paragraph 5 above.

8. Any amendment deemed to have been accepted shall enter into force six months after the date of notification of such acceptance by the Secretary-General to Parties.

Article 14. Convening of a diplomatic conference

1. Once this Protocol is in force, any Party may, by notification to the Secretary-General of the United Nations, request that a conference be convened for the purpose of reviewing this Protocol. The Secretary-General shall notify all Parties of the request and a review conference shall be convened by the Secretary-General if, within a period of four months following the date of notification by the Secretary-General, not less than one fourth of the Parties to this Protocol notify him of their concurrence with the request.

2. If a conference is convened in accordance with the preceding paragraph, the Secretary-General shall notify all the Parties and invite them to submit within a period of three months such proposals as they may wish the Conference to consider. The Secretary-General shall circulate to all Parties the provisional agenda for the Conference together with the texts of such proposals at least three months before the date on which the Conference is to meet.

3. The Secretary-General shall invite to any conference convened in accordance with this article all States referred to in Article 7, paragraphs 1, 3 and 4, of this Protocol.

Article 15. Notifications to States

In addition to the notifications provided for in Articles 13 and 14, the Secretary-General of the United Nations shall notify the States referred to in Article 7, paragraph 1, above, and the States which have become Parties to this Protocol in accordance with paragraphs 3 and 4 of Article 7, of:

(*a*) Ratifications and accessions under Article 7;

(*b*) The dates of entry into force of this Protocol in accordance with Article 8;

(*c*) Denunciations under Article 9;

(*d*) The termination of this Protocol in accordance with Article 10;

(*e*) Declarations and notifications received in accordance with Article 12, paragraphs 1 and 2.

Article 16. Depositary

The original of this Protocol shall be deposited with the Secretary-General of the United Nations, who shall send certified true copies thereof to all the States referred to in Article 7, paragraphs 1, 3 and 4, of this Protocol.

Done at Geneva, this twentieth day of February two thousand and eight, in a single copy in the English and French languages, each text being equally authentic.

2. Convention on Cluster Munitions. Dublin, 30 May 2008*

The States Parties to this Convention,

Deeply concerned that civilian populations and individual civilians continue to bear the brunt of armed conflict,

Determined to put an end for all time to the suffering and casualties caused by cluster munitions at the time of their use, when they fail to function as intended or when they are abandoned,

Concerned that cluster munition remnants kill or maim civilians, including women and children, obstruct economic and social development, including through the loss of livelihood, impede post-conflict rehabilitation and reconstruction, delay or prevent the return of refugees and internally displaced persons, can negatively impact on national and international peace-building and humanitarian assistance efforts, and have other severe consequences that can persist for many years after use,

* Adopted by the Dublin Diplomatic Conference on Cluster Munitions on 30 May 2008.

Deeply concerned also at the dangers presented by the large national stockpiles of cluster munitions retained for operational use and determined to ensure their rapid destruction,

Believing it necessary to contribute effectively in an efficient, coordinated manner to resolving the challenge of removing cluster munition remnants located throughout the world, and to ensure their destruction,

Determined also to ensure the full realization of the rights of all cluster munition victims and *recognizing* their inherent dignity,

Resolved to do their utmost in providing assistance to cluster munition victims, including medical care, rehabilitation and psychological support, as well as providing for their social and economic inclusion,

Recognizing the need to provide age- and gender-sensitive assistance to cluster munition victims and to address the special needs of vulnerable groups,

Bearing in mind the Convention on the Rights of Persons with Disabilities which, inter alia, requires that States Parties to that Convention undertake to ensure and promote the full realization of all human rights and fundamental freedoms of all persons with disabilities without discrimination of any kind on the basis of disability,

Mindful of the need to coordinate adequately efforts undertaken in various fora to address the rights and needs of victims of various types of weapons, and resolved to avoid discrimination among victims of various types of weapons,

Reaffirming that in cases not covered by this Convention or by other international agreements, civilians and combatants remain under the protection and authority of the principles of international law, derived from established custom, from the principles of humanity and from the dictates of public conscience,

Resolved also that armed groups distinct from the armed forces of a State shall not, under any circumstances, be permitted to engage in any activity prohibited to a State Party to this Convention,

Welcoming the very broad international support for the international norm prohibiting anti-personnel mines, enshrined in the 1997 Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction,

Welcoming also the adoption of the Protocol on Explosive Remnants of War, annexed 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, and its entry into force on 12 November 2006, and wishing to enhance the protection of civilians from the effects of cluster munition remnants in post-conflict environments,

Bearing in mind also United Nations Security Council Resolution 1325 on women, peace and security and United Nations Security Council Resolution 1612 on children in armed conflict,

Welcoming further the steps taken nationally, regionally and globally in recent years aimed at prohibiting, restricting or suspending the use, stockpiling, production and transfer of cluster munitions,

Stressing the role of public conscience in furthering the principles of humanity as evidenced by the global call for an end to civilian suffering caused by cluster munitions and *recognizing* the efforts to that end undertaken by the United Nations, the International

Committee of the Red Cross, the Cluster Munition Coalition and numerous other non-governmental organizations around the world,

Reaffirming the Declaration of the Oslo Conference on Cluster Munitions, by which, inter alia, States recognized the grave consequences caused by the use of cluster munitions and committed themselves to conclude by 2008 a legally binding instrument that would prohibit the use, production, transfer and stockpiling of cluster munitions that cause unacceptable harm to civilians, and would establish a framework for cooperation and assistance that ensures adequate provision of care and rehabilitation for victims, clearance of contaminated areas, risk reduction education and destruction of stockpiles,

Emphasizing the desirability of attracting the adherence of all States to this Convention, and determined to work strenuously towards the promotion of its universalization and its full implementation,

Basing themselves on the principles and rules of international humanitarian law, in particular the principle; that the right of parties to an armed conflict to choose methods or means of warfare is not unlimited and the rules that the parties to a conflict shall at all times distinguish between the civilian population and combatants and between civilian objects and military objectives and accordingly direct their operations against military objectives only, that in the conduct of military operations constant care shall be taken to spare the civilian population, civilians, and civilian objects and that the civilian population and individual civilians enjoy general protection against dangers arising from military operations,

Have agreed as follows:

Article 1. General obligations and scope

1. Each State Party undertakes never under any circumstances to:

(*a*) Use cluster munitions;

(*b*) Develop, produce, otherwise acquire stockpile, retain or transfer to anyone, directly or indirectly, cluster munitions;

(*c*) Assist, encourage or induce anyone to engage in any activity prohibited to a State Party under this Convention.

2. Paragraph 1 of this Article applies, *mutatis mutandis*, to explosive bomblets that are specifically designed to be dispersed or released from dispensers affixed to aircraft.

3. This Convention does not apply to mines.

Article 2. Definitions

For the purposes of this Convention:

1. "Cluster munition victims" means all persons who lave been killed or suffered physical or psychological injury, economic loss, social marginalization or substantial impairment of the realization of their rights caused by the use of cluster munitions. They include those persons directly impacted by cluster munitions as well as families and communities;

2. "Cluster munition" means a conventional munition that is designed to disperse or release explosive submunitions each weighing less than 20 kilograms, and includes those explosive submunitions. It does not mean the following:

(*a*) A munition or submunition designed to dispense flares, smoke, pyrotechnics or chaff; or a munition designed exclusively for an air defence role;

(*b*) A munition or submumition designed to produce electrical or electronic effects;

(*c*) A munition that, in order to avoid indiscriminate area effects and the risks posed by unexploded submunitions, has all of the following characteristics:

(i) Each munition contains fewer than ten explosive submunitions;

(ii) Each explosive submunition weighs more than four kilograms;

(iii) Each explosive submunition is designed to detect and engage a single target object;

(iv) Each explosive submunition is equipped with an electronic self-destruction mechanism;

(v) Each explosive submunition is equipped with an electronic self-deactivating feature;

3. "Explosive submunition" means a conventional munition that in order to perform its task is dispersed or released by a cluster munition and is designed to function by detonating an explosive charge prior to, on or after impact;

4. "Failed cluster munition" means a cluster munition that has been fired, dropped, launched, projected or otherwise delivered and which should have dispersed or released its explosive submunitions but failed to do so;

5. "Unexploded submunition" means an explosive submunition that has been dispersed or released by, or otherwise separated from, a cluster munition and has failed to explode as intended;

6. "Abandoned cluster munitions" means cluster munitions or explosive submunitions that have not been used and that have been left behind or dumped, and that are no longer under the control of the party that left them behind or dumped them. They may or may not have been prepared for use;

7. "Cluster munition remnants" means failed cluster munitions, abandoned cluster munitions, unexploded submunitions and unexploded bomblets;

8. "Transfer" involves, in addition to the physical movement of cluster munitions into or from national territory, the transfer of title to and control over cluster munitions, but does not involve the transfer of territory containing cluster munition remnants;

9. "Self-destruction mechanism" means an incorporated automatically-functioning mechanism which is in addition to the primary initiating mechanism of the munition and which secures the destruction of the munition into which it is incorporated;

10. "Self-deactivating" means automatically rendering a munition inoperable by means of the irreversible exhaustion of a component, for example a battery, that is essential to the operation of the munition;

11. "Cluster munition contaminated area" means an area known or suspected to contain cluster munition remnants;

12. "Mine" means a munition designed to be placed under, on or near the ground or other surface area and to be exploded by the presence, proximity or contact of a person or a vehicle;

13. "Explosive bomblet" means a conventional munition, weighing less than 20 kilograms, which is not self-propelled and which, in order to perform its task, is dispersed or, released by a dispenser, and is designed to function by detonating an explosive charge prior to, on or after impact;

14. "Dispenser" means a container that is designed to disperse or release explosive bomblets and which is affixed to an aircraft at the time of dispersal or release;

15. "Unexploded bomblet" means an explosive bomblet that has been dispersed, released or otherwise separated from a dispenser and has failed to explode as intended.

Article 3. Storage and stockpile destruction

1. Each State Party shall, in accordance with national regulations, separate all cluster munitions under its jurisdiction and control from munitions retained for operational use and mark them for the purpose of destruction.

2. Each State Party undertakes to destroy or ensure the destruction of all cluster munitions referred to in paragraph 1 of this Article as soon as possible but not later than eight years after the entry into force of this Convention for that State Party. Each State Party undertakes to ensure that destruction methods comply with applicable international standards for protecting public health and the environment.

3. If a State Party believes that it will be unable to destroy or ensure the destruction of all cluster munitions referred to in paragraph 1 of this Article within eight years of entry into force of this Convention for that State Party it may submit a request to a Meeting of States Parties or a Review Conference for an extension of the deadline for completing the destruction of such cluster munitions by a period of up to four years. A State Party may, in exceptional circumstances, request additional extensions of up to four years. The requested extensions shall not exceed the number of years strictly necessary for that State Party to complete its obligations under paragraph 2 of this Article.

4. Each request for an extension shall set out:

(*a*) The duration of the proposed extension;

(*b*) A detailed explanation of the proposed extension, including the financial and technical means available to or required by the State Party for the destruction of all cluster munitions referred to in paragraph 1 of this Article and, where applicable, the exceptional circumstances justifying it;

(*c*) A plan for how and when stockpile destruction will be completed;

(*d*) The quantity and type of cluster munitions and explosive submunitions held at the entry into force of this Convention for that State Party and any additional cluster munitions or explosive submunitions discovered after such entry into force;

(*e*) The quantity and type of cluster munitions and explosive submunitions destroyed during the period referred to in paragraph 2 of this Article; and

(*f*) The quantity and type of cluster munitions and explosive submunitions remaining to be destroyed during the proposed extension and the annual destruction rate expected to be achieved.

5. The Meeting of States Parties or the Review Conference shall, taking into consideration the factors referred to in paragraph 4 of this Article, assess the request and decide by a majority of votes of States Parties present and voting whether to grant the request for an extension. The States Parties may decide to grant a shorter extension than that requested and may propose benchmarks for the extension, as appropriate. A request for an extension shall be submitted a minimum of nine months prior to the Meeting of States Parties or the Review Conference at which it is to be considered.

6. Notwithstanding the provisions of Article 1 of this Convention, the retention or acquisition of a limited number of cluster munitions and explosive submunitions for the development of and training in cluster munition and explosive submunition detection, clearance or destruction techniques, or for the development of cluster munition countermeasures, is permitted. The amount of explosive submunitions retained or acquired shall not exceed the minimum number absolutely necessary for these purposes,

7. Notwithstanding the provisions of Article 1 of this Convention, the transfer of cluster munitions to another State Party for the purpose of destruction, as well as for the purposes described in paragraph 6 of this Article, is permitted.

8. States Parties retaining, acquiring or transferring cluster munitions or explosive submunitions for the purposes described in paragraphs 6 and 7 of this Article shall submit a detailed report on the planned and actual use of these cluster munitions and explosive submunitions and their type, quantity and lot numbers. If cluster munitions or explosive submunitions are transferred to another State Party for these purposes, the report shall include reference to the receiving party. Such a report shall be prepared for each year during which a State Party retained, acquired or transferred cluster munitions or explosive submunitions and shall be submitted to the Secretary-General of the United Nations no later than 30 April of the following year.

Article 4. Clearance and destruction of cluster munition remnants and risk reduction education

1. Each State Party undertakes to clear and destroy, or ensure the clearance and destruction of, cluster munition remnants located in cluster munition contaminated areas under its jurisdiction or control, as follows:

(*a*) Where cluster munition remnants are located in areas under its jurisdiction or control at the date of entry into force of this Convention for that State Party, such clearance and destruction shall be completed as soon as possible but not later than ten years from that date;

(*b*) Where, after entry into force of this Convention for that State Party, cluster munitions have become cluster munition remnants located in areas under its jurisdiction or control, such clearance and destruction must be completed as soon as possible but not later than ten years after the end of the active hostilities during which such cluster munitions became cluster munition remnants; and

(*c*) Upon fulfilling either of its obligations set out in subparagraphs (a) and (b) of this paragraph, that State Party shall make a declaration of compliance to the next Meeting of States Parties.

2. In fulfilling its obligations under paragraph 1 of this Article, each State Party shall take the following measures as soon as possible, taking into consideration the provisions of Article 6 of this Convention regarding international cooperation and assistance:

(*a*) Survey, assess and record the threat posed by cluster munition remnants, making every effort to identify all cluster munition contaminated areas under its jurisdiction or control;

(*b*) Assess and prioritize needs in terms of marking, protection of civilians, clearance and destruction, and take steps to mobilize resources and develop a national plan to carry out these activities, building, where appropriate, upon existing structures, experiences and methodologies;

(*c*) Take all feasible steps to ensure that all cluster munition contaminated areas under its jurisdiction or control are perimeter-marked, monitored and protected by fencing or other means to ensure the effective exclusion of civilians. Warning signs based on methods of marking readily recognizable by the affected community should be utilized in the marking of suspected hazardous areas. Signs and other hazardous area boundary markers should, as far as possible, be visible, legible, durable and resistant to environmental effects and should clearly identify which side of the marked boundary is considered to be within the cluster munition contaminated areas and which side is considered to be safe;

(*d*) Clear and destroy all cluster munition remnants located in areas under its jurisdiction or control; and

(*e*) Conduct risk reduction education to ensure awareness among civilians living in or around cluster munition contaminated areas of the risks posed by such remnants.

3. In conducting the activities referred to in paragraph 2 of this Article, each State Party shall take into account international standards, including the International Mine Action Standards (IMAS).

4. This paragraph shall apply in cases in which cluster munitions have been used or abandoned by one State Party prior to entry into force of this Convention for that State Party and have become cluster munition remnants that are located in areas under the jurisdiction or control of another State Party at the time of entry into force of this Convention for the latter.

(*a*) In such cases, upon entry into force of this Convention for both States Parties, the former State Party is strongly encouraged to provide, inter alia, technical, financial, material or human resources assistance to the latter State Party, either bilaterally or through a mutually agreed third party, including through the United Nations system or other relevant organizations, to facilitate the marking, clearance and destruction of such cluster munition remnants.

(*b*) Such assistance shall include, where available, information on types and quantities of the cluster munitions used, precise locations of cluster munition strikes and areas in which cluster munition remnants are known to be located.

5. If a State Party believes that it will be unable to clear and destroy or ensure the clearance and destruction of all cluster munition remnants referred to in paragraph 1 of

this Article within ten years of the entry into force of this Convention for that State Party, it may submit a request to a Meeting of States Parties or a Review Conference for an extension of the deadline for completing the clearance and destruction of such cluster munition remnants by a period of up to five years. The requested extension shall not exceed the number of years strictly necessary for that State Party to complete its obligations under paragraph 1 of this Article.

6. A request for an extension shall be submitted to a Meeting of States Parties or a Review Conference prior to the expiry of the time period referred to in paragraph 1 of this Article for that State Party. Each request shall be submitted a minimum of nine months prior to the Meeting of States Parties or Review Conference at which it is to be considered. Each request shall set out:

(*a*) The duration of the proposed extension;

(*b*) A detailed explanation of the reasons for the proposed extension, including the financial and technical means available to and required by the State Party for the clearance and destruction of all cluster munition remnants during the proposed extension;

(*c*) The preparation of future work and the status of work already conducted under national clearance and demining programmes during the initial ten-year period referred to in paragraph 1 of this Article and any subsequent extensions;

(*d*) The total area containing cluster munition remnants at the time of entry into force of this Convention for that State Party and any additional areas containing cluster munition remnants discovered after such entry into force;

(*e*) The total area containing cluster munition remnants cleared since entry into force of this Convention;

(*f*) The total area containing cluster munition remnants remaining to be cleared during the proposed extension;

(*g*) The circumstances that have impeded the ability of the State Party to destroy all cluster munition remnants located in areas under its jurisdiction or control during the initial ten-year period referred to in paragraph 1 of this Article, and those that may impede this ability during the proposed extension;

(*h*) The humanitarian, social, economic and environmental implications of the proposed extension; and

(*i*) Any other information relevant to the request for the proposed extension.

7. The Meeting of States Parties or the Review Conference shall, taking into consideration the factors referred to in paragraph 6 of this Article, including, inter alia, the quantities of cluster munition remnants reported, assess the request and decide by a majority of votes of States Parties present and voting whether to grant the request for an extension. The States Parties may decide to grant a shorter extension than that requested and may propose benchmarks for the extension, as appropriate.

8. Such an extension may be renewed by a period of up to five years upon the submission of a new request, in accordance with paragraphs 5, 6 and 7 of this Article. In requesting a further extension a State Party shall submit relevant additional information on what has been undertaken during the previous extension granted pursuant to this Article.

Article 5. Victim assistance

1. Each State Party with respect to cluster munition victims in areas under its jurisdiction or control shall, in accordance with applicable international humanitarian and human rights law, adequately provide age- and gender- sensitive assistance, including medical care rehabilitation and psychological support, as well as provide for their social and economic inclusion. Each State Party shall make every effort to collect reliable relevant data with respect to cluster munition victims.

2. In fulfilling its obligations under paragraph 1 of this Article each State shall:

(*a*) Assess the needs of cluster munition victims;

(*b*) Develop, implement and enforce any necessary national laws and policies;

(*c*) Develop a national plan and budget, including timeframes to carry out these activities, with a view to incorporating them within the existing national disability, development and human rights frameworks and mechanisms, while respecting the specific role and contribution of relevant actors;

(*d*) Take steps to mobilize national and international resources;

(*e*) Not discriminate against or among cluster munition victims, or between cluster munition victims and those who have suffered injuries or disabilities from other causes; differences in treatment should be based only on medical, rehabilitative, psychological or socio-economic needs;

(*f*) Closely consult with and actively involve cluster munition victims and their representative organizations;

(*g*) Designate a focal point within the government for coordination of matters relating to the implementation of this Article; and

(*h*) Strive to incorporate relevant guidelines and good pratices including in the areas of medical care, rehabilitation and psychological support, as well as social and economic inclusion.

Article 6. International cooperation and assistance

1. In fulfilling its obligations under this Convention each State Party has the right to seek and receive assistance.

2. Each State Party in a position to do so shall provide technical, material and financial assistance to States Parties affected by cluster munitions, aimed at the implementation of the obligations of this Convention. Such assistance may be provided, inter alia, through the United Nations system, international, regional or national organizations or institutions, non-governmental organizations or institutions, or on a bilateral basis.

3. Each State Party undertakes to facilitate and shall have the right to participate in the fullest possible exchange of equipment and scientific and technological information concerning the implementation of this Convention. The States Parties shall not impose undue restrictions on the pro vision and receipt of clearance and other such equipment and related technological information for humanitarian purposes.

4. In addition to any obligations it may have pursuant to paragraph 4 of Article 4 of this Convention, each State Party in a position to do so shall provide assistance for clear-

ance and destruction of cluster munition remnants and information conceiving various means and technologies related to clearance of cluster munitions, as well as lists of experts, expert agencies or national points of contact on clearance and destruction of cluster munition remnants and related activities.

5. Each State Party in a position to do so shall provide assistance for the destruction of stockpiled cluster munitions, and shall also provide assistance to identify, assess and prioritize needs and practical measures in terms of marking, risk reduction education, protection of civilians and clearance and destruction as provided in Article 4 of this Convention.

6. Where, after entry into force of this Convention, cluster munitions have become cluster munition remnants located in areas under the jurisdiction or control of a State Party, each State Party in a position to do so shall urgently provide emergency assistance to the affected State Party.

7. Each State Party in a position to do so shall provide assistance for the implementation of the obligations referred to in Article 5 of this Convention to adequately provide age- and gender-sensitive assistance, including medical care, rehabilitation and psychological support, as well as provide for social and economic inclusion of cluster munition victims. Such assistance may be provided, inter alia, through the United Nations system, international, regional or national organizations or institutions, the International Committee of the Red Cross, national Red Cross and Red Crescent Societies and their International Federation, non-governmental organizations or on a bilateral basis.

8. Each State Party in a position to do so shall provide assistance to contribute to the economic and social recovery needed as a result of cluster munition use in affected States Parties.

9. Each State Party in a position to do so may contribute to relevant trust funds in order to facilitate the provision of assistance under this Article.

10. Each State Party that seeks and receives assistance shall take all appropriate measures in order to facilitate the timely and effective implementation of this Convention, including facilitation of the entry and exit of personnel, materiel and equipment, in a manner consistent with national laws and regulations, taking into consideration international best practices.

11. Each State Party may, with the purpose of developing a national action plan, request the United Nations system, regional organizations, other States Parties or other competent intergovernmental or non-governmental institutions to assist its authorities to determine, *inter alia*:

(*a*) The nature and extent of cluster munition remnants located in areas under its jurisdiction or control;

(*b*) The financial, technological and human resources required for the implementation of the plan;

(*c*) The time estimated as necessary to clear and destroy all cluster munition remnants located in areas under its jurisdiction or control;

(*d*) Risk reduction education programmes and awareness activities to reduce the incidence of injuries or death caused by cluster munition remnants;

(*e*) Assistance to cluster munition victims; and

(*f*) The coordination relationship between the government of the State Party concerned and the relevant governmental, intergovernmental or non-governmental entities that will work in the implementation of the plan.

12. States Parties giving and receiving assistance under the provisions of this Article shall cooperate with a view to implementation of agreed assistance programmes.

Article 7. Transparency measures

1. Each State Party shall report to the Secretary-General of the United Nations as soon as practicable, and in any event not later than 180 days after the entry into force of this Convention for that State Party, on:

(*a*) The national implementation measures referred to in Article 9 of this Convention;

(*b*) The total of all cluster munitions, including explosive submissions, referred to in paragraph 1 of Article 3 of this Convention, to include a breakdown of their type, quantity and, if possible, lot numbers of each type;

(*c*) The technical characteristics of each type of cluster munition produced by that State Party prior to entry into force of this Convention for it, to the extent known, and those currently owned or possessed by it, giving, where reasonably possible, such categories of information as may facilitate identification and clearance of cluster munitions; at a minimum, this information shall include the dimensions, fusing, explosive content, metallic content; colour photographs and other information that may facilitate the clearance of cluster munition remnants;

(*d*) The status and progress of programmes for the conversion or decommissioning of production facilities for cluster munitions;

(*e*) The status and progress of programmes for the destruction, in accordance with Article 3 of this Convention, of cluster munitions, including explosive submunitions with details of the methods that will be used in destruction, the location of all destruction sites and the applicable safety and environmental standards to be observed;

(*f*) The types and quantities of cluster munitions, including explosive submunitions, destroyed in accordance with Article 3 of this Convention, including details of the methods of destruction used, the location of the destruction sites and the applicable safety and environmental standards observed;

(*g*) Stockpiles of cluster munitions, including explosive submunitions, discovered after reported completion of the programme referred to in subparagraph (e) of this paragraph, and plans for their destruction in accordance with Article 3 of this Convention;

(*h*) To the extent possible, the size and location of all cluster munition contaminated areas under its jurisdiction or control, to include as much detail as possible regarding the type and quantity of each type of cluster munition remnant in each such area and when they were used;

(*i*) The status and progress of programmes for the clearance and destruction of all types and quantities of cluster munition remnants cleared and destroyed in accordance with Article 4 of this Convention, to include the size and location of the cluster munition

contaminated area cleared and a breakdown of the quantity of each type of cluster munition remnant cleared and destroyed;

(*j*) The measures taken to provide risk reduction education and, in particular, an immediate and effective warning to civilians living in cluster munition contaminated áreas under its jurisdiction or control;

(*k*) The status and progress of implementation of its obligations under Article 5 of this Convention to adequately provide age- and gender- sensitive assistance, including medical care, rehabilitation and psychological support, as well as provide for social and economic inclusion of cluster munition victims and to collect reliable relevant data with respect to cluster munition victims;

(*l*) The name and contact details of the institutions mandated to provide information and to carry out the measures described in this paragraph;

(*m*) The amount of national resources, including financial, material or in kind, allocated to the implementation of Articles 3, 4 and 5 of this Convention; and

(*n*) The amounts, types and destinations of international cooperation and assistance provided under Article 6 of this Convention.

2. The information provided in accordance with paragraph 1 of this Article shall be updated by the States Parties annually, covering the previous calendar year, and reported to the Secretary-General of the United Nations not later than 30 April of each year.

3. The Secretary-General of the United Nations shall transmit all such reports received to the States Parties.

Article 8. Facilitation and clarification of compliance

1. The States Parties agree to consult and cooperate with each other regarding the implementation of the provisions of this Convention and to work together in a spirit of cooperation to facilitate compliance by States Parties with their obligations under this Convention.

2. If one or more States Parties wish to clarify and seek to resolve questions relating to a matter of compliance with the provisions of this Convention by another State Party, it may submit, through the Secretary-General of the United Nations, a Request for Clarification of that matter to that State Party. Such a request shall be accompanied by all appropriate information. Each State Party shall refrain from unfounded Requests for Clarification, care being taken to avoid abuse. A State Party that receives a Request for Clarification shall provide, through the Secretary-General of the United Nations, within 28 days to the requesting State Party all information that would assist in clarifying the matter.

3. If the requesting State Party does not receive a response through the Secretary-General of the United Nations within that time period, or deems the response to the Request for Clarification to be unsatisfactory, it may submit the matter through the Secretary-General of the United Nations to the next Meeting of States Parties. The Secretary-General of the United Nations shall transmit the submission, accompanied by all appropriate information pertaining to the Request for Clarification, to all States Parties. All such information shall be presented to the requested State Party which shall have the right to respond.

4. Pending the convening of any Meeting of States Parties, any of the States Parties concerned may request the Secretary-General of the United Nations to exercise his or her good offices to facilitate the clarification requested.

5. Where a matter has been submitted to it pursuant to paragraph 3 of this Article, the Meeting of States Parties shall first determine whether to consider that matter further, taking into account all information submitted by the States Parties concerned. If it does so determine, the Meeting of States Parties may suggest to the States Parties concerned ways and means further to clarify or resolve the matter under consideration, including the initiation of appropriate procedures in conformity with international law. In circumstances where the issue at hand is determined to be due to circumstances beyond the control of the requested State Party, the Meeting of States Parties may recommend appropriate measures, including the use of cooperative measures referred to in Article 6 of this Convention.

6. In addition to the procedures provided for in paragraphs 2 to 5 of this Article, the Meeting of States Parties may decide to adopt such other general procedures or specific mechanisms for clarification of compliance, including facts, and resolution of instances of non-compliance with the provisions of this Convention as it deems appropriate.

Article 9. National implementation measures

Each State Party shall take all appropriate legal, administrative and other measures to implement this Convention, including the imposition of penal sanctions to prevent and suppress any activity prohibited to a State Party under this Convention undertaken by persons or on territory under its jurisdiction or control.

Article 10. Settlement of disputes

1. When a dispute arises between two or more States Parties relating to the interpretation or application of this Convention, the States Parties concerned shall consult together with a view to the expeditious settlement of the dispute by negotiation or by other peaceful means of their choice, including recourse to the Meeting of States Parties and referral to the International Court of Justice in conformity with the Statute of the Court.

2. The Meeting of States Parties may contribute to the settlement of the dispute by whatever means it deems appropriate, including offering its good offices, calling upon the States Parties concerned to start the settlement procedure of their choice and recommending a time-limit for any agreed procedure.

Article 11. Meetings of States Parties

1. The States Parties shall meet regularly in order to consider and, where necessary, take decisions in respect of any matter with regard to the application or implementation of this Convention, including:

(*a*) The operation and status of this Convention;

(*b*) Matters arising from the reports submitted under the provisions of this Convention;

(*c*) International cooperation and assistance in accordance with Article 6 of this Convention;

(*d*) The development of technologies to clear cluster munition remnants;

(*e*) Submissions of States Parties under Articles 8 and 10 of this Convention; and

(*f*) Submissions of States Parties as provided for in Articles 3 and 4 of this Convention.

2. The first Meeting of States Parties shall be convened by the Secretary-General of the United Nations within one year of entry into force of this Convention. The subsequent meetings shall be convened by the Secretary-General of the United Nations annually until the first Review Conference.

3. States not party to this Convention, as well as the United Nations, other relevant international organizations or institutions, regional organizations, the International Committee of the Red Cross, the International Federation of Red Cross and Red Crescent Societies and relevant non-governmental organizations may be invited to attend these meetings as observers in accordance with the agreed rules of procedure.

Article 12. Review Conferences

1. A Review Conference shall be convened by the Secretary-General of the United Nations five years after the entry into force of this Convention. Further Review Conferences shall be convened by the Secretary-General of the United Nations if so requested by one or more States Parties, provided that the interval between Review Conferences shall in no case be less than five years. All States Parties to this Convention shall be invited to each Review Conference.

2. The purpose of the Review Conference shall be:

(*a*) To review the operation and status of this Convention;

(*b*) To consider the need for and the interval between further Meetings of States Parties referred to in paragraph 2 of Article 11 of this Convention; and

(*c*) To take decisions on submissions of States Parties as provided for in Articles 3 and 4 of this Convention.

3. States not party to this Convention, as well as the United Nations, other relevant international organizations or institutions, regional organizations, the International Committee of the Red Cross, the International Federation of Red Cross and Red Crescent Societies and relevant non-governmental organizations may be invited to attend each Review Conference as observers in accordance with the agreed rules of procedure.

Article 13. Amendments

1. At any time after its entry into force any State Party may propose amendments to this Convention. Any proposal for an amendment shall be communicated to the Secretary-General of the United Nations, who shall circulate it to all States Parties and shall seek their views on whether an Amendment Conference should be convened to consider the proposal. If a majority of the States Parties notify the Secretary-General of the United Nations no later than 90 days after its circulation that they support further consideration of the proposal, the Secretary-General of the United Nations shall convene an Amendment Conference to which all States Parties shall be invited.

2. States not party to this Convention, as well as the United Nations, other relevant international organizations or institutions, regional organizations, the International Committee of the Red Cross, the International Federation of Red Cross and Red Crescent Societies and relevant non-governmental organizations may be invited to attend each Amendment Conference as observers in accordance with the agreed rules of procedure.

3. The Amendment Conference shall be held immediately following a Meeting of States Parties or a Review Conference unless a majority of the States Parties request that it be held earlier.

4. Any amendment to this Convention shall be adopted by a majority of two thirds of the States Parties present and voting at the Amendment Conference. The Depositary shall communicate any amendment so adopted to all States.

5. An amendment to this Convention shall enter into force for States Parties that have accepted the amendment on the date of deposit of acceptances by a majority of the States which were Parties at the date of adoption of the amendment. Thereafter it shall enter into force for any remaining State Party on the date of deposit of its instrument of acceptance.

Article 14. Costs and administrative tasks

1. The costs of the Meetings of States Parties, the Review Conferences and the Amendment Conferences shall be borne by the States Parties and States not party to this Convention participating therein, in accordance with the United Nations scale of assessment adjusted appropriately.

2. The costs incurred by the Secretary-General of the United Nations under Articles 7 and 8 of this Convention shall be borne by the States Parties in accordance with the United Nations scale of assessment adjusted appropriately.

3. The performance by the Secretary-General of the United Nations of administrative tasks assigned to him or her under this Convention is subject to an appropriate United Nations mandate.

Article 15. Signature

This Convention done at Dublin on 30 March 2008, shall be open for signature at Oslo by all States on 3 December 2008 and thereafter at United Nations Headquarters in New York until its entry into force.

Article 16. Ratification, acceptance, approval or accession

1. This Convention is subject to ratification, acceptance or approval by the Signatories.

2. It shall be open for accession by any State that has not signed the Convention.

3. The instruments of ratification, acceptance, approval or accession shall be deposited with the Depositary.

Article 17. Entry into force

1. This Convention shall enter into force on the first day of the sixth month after the month in which the thirtieth instrument of ratification, acceptance, approval or accession has been deposited.

2. For any State that deposits its instrument of ratification, acceptance, approval or accession after the date of the deposit of the thirtieth instrument of ratification, acceptance, approval or accession, this Convention shall enter into force on the first day of the sixth month after the date on which that State has deposited its instrument of ratification, acceptance, approval or accession.

Article 18. Provisional application

Any State may, at the time of its ratification, acceptance, approval or accession, declare that it will apply provisionally Article 1 of this Convention pending its entry into force for that State.

Article 19. Reservations

The Articles of this Convention shall not be subject to reservations.

Article 20. Duration and withdrawal

1. This Convention shall be of unlimited duration.

2. Each State Party shall, in exercising its national sovereignty, have the right to withdraw from this Convention. It shall give notice of such withdrawal to all other States Parties, to the Depositary and to the United Nations Security Council. Such instrument of withdrawal shall include a full explanation of the reasons motivating withdrawal.

3. Such withdrawal shall only take effect six months after the receipt of the instrument of withdrawal by the Depositary. If, however, on the expiry of that six-month period, the withdrawing State Party is engaged in an armed conflict, the withdrawal shall not take effect before the end of the armed conflict.

Article 21. Relations with States not party to this Convention

1. Each State Party shall encourage States not party to this Convention to ratify, accept, approve or accede to this Convention, with the goal of attracting the adherence of all States to this Convention.

2. Each State Party shall notify the governments of all States not party to this Convention, referred to in paragraph 3 of this Article, of its obligations under this Convention, shall promote the norms it establishes and shall make its best efforts to discourage States not party to this Convention from using cluster munitions.

3. Notwithstanding the provisions of Article 1 of this Convention and in accordance with international law, States Parties, their military personnel or nationals, may engage in military cooperation and operations with States not party to this Convention that might engage in activities prohibited to a State Party.

4. Nothing in paragraph 3 of this Article shall authorize a State Party:

(*a*) To develop, produce or otherwise acquire cluster munitions;

(*b*) To itself stockpile or transfer cluster munitions;

(*c*) To itself use cluster munitions; or

(*d*) To expressly request the use of cluster munitions in cases where the choice of munitions used is within its exclusive control.

Article 22. Depositary

The Secretary-General of the United Nations is hereby designated as the Depositary of this Convention.

Article 23. Authentic texts

The Arabic, Chinese, English, French, Russian and Spanish texts of this Convention shall be equally authentic.

3. Annex XVIII World Tourism Organization (WTO) to the Convention on the Privileges and Immunities of the Specialized Agencies, 1947. Jeju, 30 July 2008

In their application to the World Tourism Organization (hereinafter referred to as "the Organization"), the standard clauses shall operate subject to the following modifications:

1. Article V and section 25, paragraphs 1 and 2 (I), of article VII of the Convention shall extend to the representatives of Associate Members participating in the work of the Organization in accordance with the Statutes of the World Tourism Organization (hereinafter referred to as "the Statutes").

2. Representatives of Affiliate Members, participating in the activities of the Organization in accordance with the Statutes, shall be granted:

(*a*) All facilities in order to safeguard the independent exercise of their official functions;

(*b*) Maximum expeditiousness in the processing of their applications for visas, where required and when accompanied by a certificate that they are travelling on the business of the Organization. In addition, such persons shall be granted facilities for speedy travel;

(*c*) In connection with subparagraph (b) above, the principle contained in the last sentence of section 12 of the standard clauses shall apply.

3. Experts, other than officials coming within the scope of article VI of the Convention, serving on organs and bodies of, or performing missions for, the Organization, shall be accorded such privileges and immunities as are necessary for the independent and effective exercise of their functions, including the time spent on journeys in connection with service on organs and bodies or missions. In particular they shall be accorded:

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

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[*] United Nations, *Treaty Series,* vol. 985, p. 351.

(*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 serving on organs and bodies of, or employed on mission for, the Organization;

(*c*) Inviolability for all papers and documents relating to the work on which they are engaged for the Organization;

(*d*) For the purpose of their communications with the Organization, 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 and in respect of their personal baggage as are accorded to officials of foreign Governments on temporary official missions.

4. Privileges and immunities are granted to the experts in the interests of the Organization and not for the personal benefit of the individuals themselves. The Secretary-General of the Organization shall have the right and the duty to waive the immunity of any expert in any case where, in his/her opinion, the immunity would impede the course of justice and it can be waived without prejudice to the interests of the Organization.

5. Notwithstanding paragraph 2 above, paragraphs 3 and 4 above shall apply to representatives of Affiliate Members performing missions for the Organization as experts.

6. The privileges and immunities, exemptions and facilities referred to in section 21 of the standard clauses shall also be accorded to the Deputy Secretary-General of the Organization, his/her spouse and minor children.

4. Optional Protocol to the International Covenant on Economic, Social and Cultural Rights. New York, 10 December 2008*

Preamble

The States Parties to the present Protocol,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Noting that the Universal Declaration of Human Rights proclaims that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status,

Recalling that the Universal Declaration of Human Rights and the International Covenants on Human Rights recognize that the ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy civil, cultural, economic, political and social rights,

* Adopted at the 66th plenary meeting of the General Assembly by resolution 63/117 of 10 December 2008. United Nations, *Treaty Series*, vol. 2303, p. 148.

Reaffirming the universality, indivisibility, interdependence and interrelatedness of all human rights and fundamental freedoms,

Recalling that each State Party to the International Covenant on Economic, Social and Cultural Rights (hereinafter referred to as the Covenant) undertakes to take steps, individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the Covenant by all appropriate means, including particularly the adoption of legislative measures,

Considering that, in order further to achieve the purposes of the Covenant and the implementation of its provisions, it would be appropriate to enable the Committee on Economic, Social and Cultural Rights (hereinafter referred to as the Committee) to carry out the functions provided for in the present Protocol,

Have agreed as follows

Article 1. Competence of the Committee to receive and consider communications

1. A State Party to the Covenant that becomes a Party to the present Protocol recognizes the competence of the Committee to receive and consider communications as provided for by the provisions of the present Protocol.

2. No communication shall be received by the Committee if it concerns a State Party to the Covenant which is not a Party to the present Protocol.

Article 2. Communications

Communications may be submitted by or on behalf of individuals or groups of individuals, under the jurisdiction of a State Party, claiming to be victims of a violation of any of the economic, social and cultural rights set forth in the Covenant by that State Party. Where a communication is submitted on behalf of individuals or groups of individuals, this shall be with their consent unless the author can justify acting on their behalf without such consent.

Article 3. Admissibility

1. The Committee shall not consider a communication unless it has ascertained that all available domestic remedies have been exhausted. This shall not be the rule where the application of such remedies is unreasonably prolonged.

2. The Committee shall declare a communication inadmissible when:

(*a*) It is not submitted within one year after the exhaustion of domestic remedies, except in cases where the author can demonstrate that it had not been possible to submit the communication within that time limit;

(*b*) The facts that are the subject of the communication occurred prior to the entry into force of the present Protocol for the State Party concerned unless those facts continued after that date;

(*c*) The same matter has already been examined by the Committee or has been or is being examined under another procedure of international investigation or settlement;

(*d*) It is incompatible with the provisions of the Covenant;

(*e*) It is manifestly ill-founded, not sufficiently substantiated or exclusively based on reports disseminated by mass media;

(*f*) It is an abuse of the right to submit a communication; or when

(*g*) It is anonymous or not in writing.

Article 4. Communications not revealing a clear disadvantage

The Committee may, if necessary, decline to consider a communication where it does not reveal that the author has suffered a clear disadvantage, unless the Committee considers that the communication raises a serious issue of general importance.

Article 5. Interim measures

At any time after the receipt of a communication and before a determination on the merits has been reached, the Committee may transmit to the State Party concerned for its urgent consideration a request that the State Party take such interim measures as may be necessary in exceptional circumstances to avoid possible irreparable damage to the victim or victims of the alleged violations.

Where the Committee exercises its discretion under paragraph 1 of the present article, this does not imply a determination on admissibility or on the merits of the communication.

Article 6. Transmission of the communication

1. Unless the Committee considers a communication inadmissible without reference to the State Party concerned, the Committee shall bring any communication submitted to it under the present Protocol confidentially to the attention of the State Party concerned.

2. Within six months, the receiving State Party shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been provided by that State Party.

Article 7. Friendly settlement

1. The Committee shall make available its good offices to the parties concerned with a view to reaching a friendly settlement of the matter on the basis of the respect for the obligations set forth in the Covenant.

2. An agreement on a friendly settlement closes consideration of the communication under the present Protocol.

Article 8. Examination of communications

1. The Committee shall examine communications received under article 2 of the present Protocol in the light of all documentation submitted to it, provided that this documentation is transmitted to the parties concerned.

2. The Committee shall hold closed meetings when examining communications under the present Protocol.

3. When examining a communication under the present Protocol, the Committee may consult, as appropriate, relevant documentation emanating from other United Nations bodies, specialized agencies, funds, programmes and mechanisms, and other international organizations, including from regional human rights systems, and any observations or comments by the State Party concerned.

4. When examining communications under the present Protocol, the Committee shall consider the reasonableness of the steps taken by the State Party in accordance with part II of the Covenant. In doing so, the Committee shall bear in mind that the State Party may adopt a range of possible policy measures for the implementation of the rights set forth in the Covenant.

Article 9. Follow-up to the views of the Committee

1. After examining a communication, the Committee shall transmit its views on the communication, together with its recommendations, if any, to the parties concerned.

2. The State Party shall give due consideration to the views of the Committee, together with its recommendations, if any, and shall submit to the Committee, within six months, a written response, including information on any action taken in the light of the views and recommendations of the Committee.

3. The Committee may invite the State Party to submit further information about any measures the State Party has taken in response to its views or recommendations, if any, including as deemed appropriate by the Committee, in the State Party's subsequent reports under articles 16 and 17 of the Covenant.

Article 10. Inter-State communications

1. A State Party to the present Protocol may at any time declare under the present article that it recognizes the competence of the Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the Covenant. Communications under the present article may be received and considered only if submitted by a State Party that has made a declaration recognizing in regard to itself the competence of the Committee. No communication shall be received by the Committee if it concerns a State Party which has not made such a declaration. Communications received under the present article shall be dealt with in accordance with the following procedure:

(*a*) If a State Party to the present Protocol considers that another State Party is not fulfilling its obligations under the Covenant, it may, by written communication, bring the matter to the attention of that State Party. The State Party may also inform the Committee of the matter. Within three months after the receipt of the communication the receiving State shall afford the State that sent the communication an explanation, or any other statement in writing clarifying the matter, which should include, to the extent possible and pertinent, reference to domestic procedures and remedies taken, pending or available in the matter;

(*b*) If the matter is not settled to the satisfaction of both States Parties concerned within six months after the receipt by the receiving State of the initial communication,

either State shall have the right to refer the matter to the Committee, by notice given to the Committee and to the other State;

(*c*) The Committee shall deal with a matter referred to it only after it has ascertained that all available domestic remedies have been invoked and exhausted in the matter. This shall not be the rule where the application of the remedies is unreasonably prolonged;

(*d*) Subject to the provisions of subparagraph (c) of the present paragraph the Committee shall make available its good offices to the States Parties concerned with a view to a friendly solution of the matter on the basis of the respect for the obligations set forth in the Covenant;

(*e*) The Committee shall hold closed meetings when examining communications under the present article;

(*f*) In any matter referred to it in accordance with subparagraph (b) of the present paragraph, the Committee may call upon the States Parties concerned, referred to in subparagraph (b), to supply any relevant information;

(*g*) The States Parties concerned, referred to in subparagraph (b) of the present paragraph, shall have the right to be represented when the matter is being considered by the Committee and to make submissions orally and/or in writing;

(*h*) The Committee shall, with all due expediency after the date of receipt of notice under subparagraph (b) of the present paragraph, submit a report, as follows:

(i) If a solution within the terms of subparagraph (d) of the present paragraph is reached, the Committee shall confine its report to a brief statement of the facts and of the solution reached;

(ii) If a solution within the terms of subparagraph (d) is not reached, the Committee shall, in its report, set forth the relevant facts concerning the issue between the States Parties concerned. The written submissions and record of the oral submissions made by the States Parties concerned shall be attached to the report. The Committee may also communicate only to the States Parties concerned any views that it may consider relevant to the issue between them.

In every matter, the report shall be communicated to the States Parties concerned.

2. A declaration under paragraph 1 of the present article shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter that is the subject of a communication already transmitted under the present article; no further communication by any State Party shall be received under the present article after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State Party concerned has made a new declaration.

Article 11. Inquiry procedure

1. A State Party to the present Protocol may at any time declare that it recognizes the competence of the Committee provided for under the present article.

2. If the Committee receives reliable information indicating grave or systematic violations by a State Party of any of the economic, social and cultural rights set forth in the Covenant, the Committee shall invite that State Party to cooperate in the examination of the information and to this end to submit observations with regard to the information concerned.

3. Taking into account any observations that may have been submitted by the State Party concerned as well as any other reliable information available to it, the Committee may designate one or more of its members to conduct an inquiry and to report urgently to the Committee. Where warranted and with the consent of the State Party, the inquiry may include a visit to its territory.

4. Such an inquiry shall be conducted confidentially and the cooperation of the State Party shall be sought at all stages of the proceedings.

5. After examining the findings of such an inquiry, the Committee shall transmit these findings to the State Party concerned together with any comments and recommendations.

6. The State Party concerned shall, within six months of receiving the findings, comments and recommendations transmitted by the Committee, submit its observations to the Committee.

7. After such proceedings have been completed with regard to an inquiry made in accordance with paragraph 2 of the present article, the Committee may, after consultations with the State Party concerned, decide to include a summary account of the results of the proceedings in its annual report provided for in article 15 of the present Protocol.

8. Any State Party having made a declaration in accordance with paragraph 1 of the present article may, at any time, withdraw this declaration by notification to the Secretary-General.

Article 12. Follow-up to the inquiry procedure

1. The Committee may invite the State Party concerned to include in its report under articles 16 and 17 of the Covenant details of any measures taken in response to an inquiry conducted under article 11 of the present Protocol.

2. The Committee may, if necessary, after the end of the period of six months referred to in article 11, paragraph 6, invite the State Party concerned to inform it of the measures taken in response to such an inquiry.

Article 13. Protection measures

A State Party shall take all appropriate measures to ensure that individuals under its jurisdiction are not subjected to any form of ill-treatment or intimidation as a consequence of communicating with the Committee pursuant to the present Protocol.

Article 14. International assistance and cooperation

1. The Committee shall transmit, as it may consider appropriate, and with the consent of the State Party concerned, to United Nations specialized agencies, funds and programmes and other competent bodies, its views or recommendations concerning com-

munications and inquiries that indicate a need for technical advice or assistance, along with the State Party's observations and suggestions, if any, on these views or recommendations.

2. The Committee may also bring to the attention of such bodies, with the consent of the State Party concerned, any matter arising out of communications considered under the present Protocol which may assist them in deciding, each within its field of competence, on the advisability of international measures likely to contribute to assisting States Parties in achieving progress in implementation of the rights recognized in the Covenant.

3. A trust fund shall be established in accordance with the relevant procedures of the General Assembly, to be administered in accordance with the financial regulations and rules of the United Nations, with a view to providing expert and technical assistance to States Parties, with the consent of the State Party concerned, for the enhanced implementation of the rights contained in the Covenant, thus contributing to building national capacities in the area of economic, social and cultural rights in the context of the present Protocol.

4. The provisions of the present article are without prejudice to the obligations of each State Party to fulfil its obligations under the Covenant.

Article 15. Annual report

The Committee shall include in its annual report a summary of its activities under the present Protocol.

Article 16 Dissemination and information

Each State Party undertakes to make widely known and to disseminate the Covenant and the present Protocol and to facilitate access to information about the views and recommendations of the Committee, in particular, on matters involving that State Party, and to do so in accessible formats for persons with disabilities.

Article 17. Signature, ratification and accession

1. The present Protocol is open for signature by any State that has signed, ratified or acceded to the Covenant.

2. The present Protocol is subject to ratification by any State that has ratified or acceded to the Covenant. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

3. The present Protocol shall be open to accession by any State that has ratified or acceded to the Covenant.

4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

Article 18. Entry into force

1. The present Protocol shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the tenth instrument of ratification or accession.

2. For each State ratifying or acceding to the present Protocol, after the deposit of the tenth instrument of ratification or accession, the Protocol shall enter into force three months after the date of the deposit of its instrument of ratification or accession.

Article 19. Amendments

Any State Party may propose an amendment to the present Protocol and submit it to the Secretary-General of the United Nations. The Secretary-General shall communicate any proposed amendments to States Parties, with a request to be notified whether they favour a meeting of States Parties for the purpose of considering and deciding upon the proposals. In the event that, within four months from the date of such communication, at least one third of the States Parties favour such a meeting, the Secretary-General shall convene the meeting under the auspices of the United Nations. Any amendment adopted by a majority of two thirds of the States Parties present and voting shall be submitted by the Secretary-General to the General Assembly for approval and thereafter to all States Parties for acceptance.

2. An amendment adopted and approved in accordance with paragraph 1 of the present article shall enter into force on the thirtieth day after the number of instruments of acceptance deposited reaches two thirds of the number of States Parties at the date of adoption of the amendment. Thereafter, the amendment shall enter into force for any State Party on the thirtieth day following the deposit of its own instrument of acceptance. An amendment shall be binding only on those States Parties which have accepted it.

Article 20. Denunciation

1. Any State Party may denounce the present Protocol at any time by written notification addressed to the Secretary-General of the United Nations. Denunciation shall take effect six months after the date of receipt of the notification by the Secretary-General.

2. Denunciation shall be without prejudice to the continued application of the provisions of the present Protocol to any communication submitted under articles 2 and 10 or to any procedure initiated under article 11 before the effective date of denunciation.

Article 21. Notification by the Secretary-General

The Secretary-General of the United Nations shall notify all States referred to in article 26, paragraph 1, of the Covenant of the following particulars:

(a) Signatures, ratifications and accessions under the present Protocol;

(b) The date of entry into force of the present Protocol and of any amendment under article 19;

(c) Any denunciation under article 20.

Article 22. Official languages

1. The present Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Protocol to all States referred to in article 26 of the Covenant.

5. United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea. New York, 11 December 2008.*

The States Parties to this Convention,

Reaffirming their belief that international trade on the basis of equality and mutual benefit is an important element in promoting friendly relations among States,

Convinced that the progressive harmonization and unification of international trade law, in reducing or removing legal obstacles to the flow of international trade, significantly contributes to universal economic cooperation among all States on a basis of equality, equity and common interest, and to the well-being of all peoples,

Recognizing the significant contribution of the International Convention for the Unification of Certain Rules of Law relating to Bills of Lading, signed in Brussels on 25 August 1924, and its Protocols, and of the United Nations Convention on the Carriage of Goods by Sea, signed in Hamburg on 31 March 1978, to the harmonization of the law governing the carriage of goods by sea,

Mindful of the technological and commercial developments that have taken place since the adoption of those conventions and of the need to consolidate and modernize them,

Noting that shippers and carriers do not have the benefit of a binding universal regime to support the operation of contracts of maritime carriage involving other modes of transport,

Believing that the adoption of uniform rules to govern international contracts of carriage wholly or partly by sea will promote legal certainty, improve the efficiency of international carriage of goods and facilitate new access opportunities for previously remote parties and markets, thus playing a fundamental role in promoting trade and economic development, both domestically and internationally,

Have agreed as follows:

Chapter 1. General provisions

Article 1. Definitions

For the purposes of this Convention:

* Adopted at the 67th plenary meeting of the General Assembly by resolution 63/122 of 11 December 2008.

1. "Contract of carriage" means a contract in which a carrier, against the payment of freight, undertakes to carry goods from one place to another. The contract shall provide for carriage by sea and may provide for carriage by other modes of transport in addition to the sea carriage.

2. "Volume contract" means a contract of carriage that provides for the carriage of a specified quantity of goods in a series of shipments during an agreed period of time. The specification of the quantity may include a minimum, a maximum or a certain range.

3. "Liner transportation" means a transportation service that is offered to the public through publication or similar means and includes transportation by ships operating on a regular schedule between specified ports in accordance with publicly available timetables of sailing dates.

4. "Non-liner transportation" means any transportation that is not liner transportation.

5. "Carrier" means a person that enters into a contract of carriage with a shipper.

6. (*a*) "Performing party" means a person other than the carrier that performs or undertakes to perform any of the carrier's obligations under a contract of carriage with respect to the receipt, loading, handling, stowage, carriage, care, unloading or delivery of the goods, to the extent that such person acts, either directly or indirectly, at the carrier's request or under the carrier's supervision or control.

(*b*) "Performing party" does not include any person that is retained, directly or indirectly, by a shipper, by a documentary shipper, by the controlling party or by the consignee instead of by the carrier.

7. "Maritime performing party" means a performing party to the extent that it performs or undertakes to perform any of the carrier's obligations during the period between the arrival of the goods at the port of loading of a ship and their departure from the port of discharge of a ship. An inland carrier is a maritime performing party only if it performs or undertakes to perform its services exclusively within a port area.

8. "Shipper" means a person that enters into a contract of carriage with a carrier.

9. "Documentary shipper" means a person, other than the shipper, that accepts to be named as "shipper" in the transport document or electronic transport record.

10. "Holder" means:

(*a*) A person that is in possession of a negotiable transport document; and (i) if the document is an order document, is identified in it as the shipper or the consignee, or is the person to which the document is duly endorsed; or (ii) if the document is a blank endorsed order document or bearer document, is the bearer thereof; or

(*b*) The person to which a negotiable electronic transport record has been issued or transferred in accordance with the procedures referred to in article 9, paragraph 1.

11. "Consignee" means a person entitled to delivery of the goods under a contract of carriage or a transport document or electronic transport record.

12. "Right of control" of the goods means the right under the contract of carriage to give the carrier instructions in respect of the goods in accordance with chapter 10.

13. "Controlling party" means the person that pursuant to article 51 is entitled to exercise the right of control.

14. "Transport document" means a document issued under a contract of carriage by the carrier that:

(*a*) Evidences the carrier's or a performing party's receipt of goods under a contract of carriage; and

(*b*) Evidences or contains a contract of carriage.

15. "Negotiable transport document" means a transport document that indicates, by wording such as "to order" or "negotiable" or other appropriate wording recognized as having the same effect by the law applicable to the document, that the goods have been consigned to the order of the shipper, to the order of the consignee, or to bearer, and is not explicitly stated as being "non-negotiable" or "not negotiable".

16. "Non-negotiable transport document" means a transport document that is not a negotiable transport document.

17. "Electronic communication" means information generated, sent, received or stored by electronic, optical, digital or similar means with the result that the information communicated is accessible so as to be usable for subsequent reference.

18. "Electronic transport record" means information in one or more messages issued by electronic communication under a contract of carriage by a carrier, including information logically associated with the electronic transport record by attachments or otherwise linked to the electronic transport record contemporaneously with or subsequent to its issue by the carrier, so as to become part of the electronic transport record, that:

(*a*) Evidences the carrier's or a performing party's receipt of goods under a contract of carriage; and

(*b*) Evidences or contains a contract of carriage.

19. "Negotiable electronic transport record" means an electronic transport record:

(*a*) That indicates, by wording such as "to order", or "negotiable", or other appropriate wording recognized as having the same effect by the law applicable to the record, that the goods have been consigned to the order of the shipper or to the order of the consignee, and is not explicitly stated as being "non-negotiable" or "not negotiable"; and

(*b*) The use of which meets the requirements of article 9, paragraph 1.

20. "Non-negotiable electronic transport record" means an electronic transport record that is not a negotiable electronic transport record.

21. The "issuance" of a negotiable electronic transport record means the issuance of the record in accordance with procedures that ensure that the record is subject to exclusive control from its creation until it ceases to have any effect or validity.

22. The "transfer" of a negotiable electronic transport record means the transfer of exclusive control over the record.

23. "Contract particulars" means any information relating to the contract of carriage or to the goods (including terms, notations, signatures and endorsements) that is in a transport document or an electronic transport record.

24. "Goods" means the wares, merchandise, and articles of every kind whatsoever that a carrier undertakes to carry under a contract of carriage and includes the packing and any equipment and container not supplied by or on behalf of the carrier.

25. "Ship" means any vessel used to carry goods by sea.

26. "Container" means any type of container, transportable tank or flat, swapbody, or any similar unit load used to consolidate goods, and any equipment ancillary to such unit load.

27. "Vehicle" means a road or railroad cargo vehicle.

28. "Freight" means the remuneration payable to the carrier for the carriage of goods under a contract of carriage.

29. "Domicile" means (a) a place where a company or other legal person or association of natural or legal persons has its (i) statutory seat or place of incorporation or central registered office, whichever is applicable, (ii) central administration or (iii) principal place of business, and (b) the habitual residence of a natural person.

30. "Competent court" means a court in a Contracting State that, according to the rules on the internal allocation of jurisdiction among the courts of that State, may exercise jurisdiction over the dispute.

Article 2. Interpretation of this Convention

In the interpretation of this Convention, regard is to be had to its international character and to the need to promote uniformity in its application and the observance of good faith in international trade.

Article 3. Form requirements

The notices, confirmation, consent, agreement, declaration and other communications referred to in articles 19, paragraph 2; 23, paragraphs 1 to 4; 36, subparagraphs 1 (b), (c) and (d); 40, subparagraph 4 (b); 44; 48, paragraph 3; 51, subparagraph 1 (b); 59, paragraph 1; 63; 66; 67, paragraph 2; 75, paragraph 4; and 80, paragraphs 2 and 5, shall be in writing. Electronic communications may be used for these purposes, provided that the use of such means is with the consent of the person by which it is communicated and of the person to which it is communicated.

Article 4. Applicability of defences and limits of liability

1. Any provision of this Convention that may provide a defence for, or limit the liability of, the carrier applies in any judicial or arbitral proceeding, whether founded in contract, in tort, or otherwise, that is instituted in respect of loss of, damage to, or delay in delivery of goods covered by a contract of carriage or for the breach of any other obligation under this Convention against:

(*a*) The carrier or a maritime performing party;

(*b*) The master, crew or any other person that performs services on board the ship; or

(*c*) Employees of the carrier or a maritime performing party.

2. Any provision of this Convention that may provide a defence for the shipper or the documentary shipper applies in any judicial or arbitral proceeding, whether founded in contract, in tort, or otherwise, that is instituted against the shipper, the documentary shipper, or their subcontractors, agents or employees.

Chapter 2. Scope of application

Article 5. General scope of application

1. Subject to article 6, this Convention applies to contracts of carriage in which the place of receipt and the place of delivery are in different States, and the port of loading of a sea carriage and the port of discharge of the same sea carriage are in different States, if, according to the contract of carriage, any one of the following places is located in a Contracting State:

(*a*) The place of receipt;

(*b*) The port of loading;

(*c*) The place of delivery; or

(*d*) The port of discharge.

2. This Convention applies without regard to the nationality of the vessel, the carrier, the performing parties, the shipper, the consignee, or any other interested parties.

Article 6. Specific exclusions

1. This Convention does not apply to the following contracts in liner transportation:

(*a*) Charter parties; and

(*b*) Other contracts for the use of a ship or of any space thereon.

2. This Convention does not apply to contracts of carriage in non-liner transportation except when:

(*a*) There is no charter party or other contract between the parties for the use of a ship or of any space thereon; and

(*b*) A transport document or an electronic transport record is issued.

Article 7. Application to certain parties

Notwithstanding article 6, this Convention applies as between the carrier and the consignee, controlling party or holder that is not an original party to the charter party or other contract of carriage excluded from the application of this Convention. However, this Convention does not apply as between the original parties to a contract of carriage excluded pursuant to article 6.

Chapter 3. Electronic transport records

Article 8. Use and effect of electronic transport records

Subject to the requirements set out in this Convention:

(*a*) Anything that is to be in or on a transport document under this Convention may be recorded in an electronic transport record, provided the issuance and subsequent use of an electronic transport record is with the consent of the carrier and the shipper; and

(*b*) The issuance, exclusive control, or transfer of an electronic transport record has the same effect as the issuance, possession, or transfer of a transport document.

Article 9. Procedures for use of negotiable electronic transport records

1. The use of a negotiable electronic transport record shall be subject to procedures that provide for:

(*a*) The method for the issuance and the transfer of that record to an intended holder;

(*b*) An assurance that the negotiable electronic transport record retains its integrity;

(*c*) The manner in which the holder is able to demonstrate that it is the holder; and

(*d*) The manner of providing confirmation that delivery to the holder has been effected, or that, pursuant to articles 10, paragraph 2, or 47, subparagraphs 1 (a) (ii) and (c), the electronic transport record has ceased to have any effect or validity.

2. The procedures in paragraph 1 of this article shall be referred to in the contract particulars and be readily ascertainable.

Article 10. Replacement of negotiable transport document or negotiable electronic transport record

1. If a negotiable transport document has been issued and the carrier and the holder agree to replace that document by a negotiable electronic transport record:

(*a*) The holder shall surrender the negotiable transport document, or all of them if more than one has been issued, to the carrier;

(*b*) The carrier shall issue to the holder a negotiable electronic transport record that includes a statement that it replaces the negotiable transport document; and

(*c*) The negotiable transport document ceases thereafter to have any effect or validity.

2. If a negotiable electronic transport record has been issued and the carrier and the holder agree to replace that electronic transport record by a negotiable transport document:

(*a*) The carrier shall issue to the holder, in place of the electronic transport record, a negotiable transport document that includes a statement that it replaces the negotiable electronic transport record; and

(*b*) The electronic transport record ceases thereafter to have any effect or validity.

Chapter 4. Obligations of the carrier

Article 11. Carriage and delivery of the goods

The carrier shall, subject to this Convention and in accordance with the terms of the contract of carriage, carry the goods to the place of destination and deliver them to the consignee.

Article 12. Period of responsibility of the carrier

The period of responsibility of the carrier for the goods under this Convention begins when the carrier or a performing party receives the goods for carriage and ends when the goods are delivered.

(*a*) If the law or regulations of the place of receipt require the goods to be handed over to an authority or other third party from which the carrier may collect them, the period of responsibility of the carrier begins when the carrier collects the goods from the authority or other third party.

(*b*) If the law or regulations of the place of delivery require the carrier to hand over the goods to an authority or other third party from which the consignee may collect them, the period of responsibility of the carrier ends when the carrier hands the goods over to the authority or other third party.

3. For the purpose of determining the carrier's period of responsibility, the parties may agree on the time and location of receipt and delivery of the goods, but a provision in a contract of carriage is void to the extent that it provides that:

(*a*) The time of receipt of the goods is subsequent to the beginning of their initial loading under the contract of carriage; or

(*b*) The time of delivery of the goods is prior to the completion of their final unloading under the contract of carriage.

Article 13. Specific obligations

1. The carrier shall during the period of its responsibility as defined in article 12, and subject to article 26, properly and carefully receive, load, handle, stow, carry, keep, care for, unload and deliver the goods.

2. Notwithstanding paragraph 1 of this article, and without prejudice to the other provisions in chapter 4 and to chapters 5 to 7, the carrier and the shipper may agree that the loading, handling, stowing or unloading of the goods is to be performed by the shipper, the documentary shipper or the consignee. Such an agreement shall be referred to in the contract particulars.

Article 14. Specific obligations applicable to the voyage by sea

The carrier is bound before, at the beginning of, and during the voyage by sea to exercise due diligence to:

(*a*) Make and keep the ship seaworthy;

(*b*) Properly crew, equip and supply the ship and keep the ship so crewed, equipped and supplied throughout the voyage; and

(*c*) Make and keep the holds and all other parts of the ship in which the goods are carried, and any containers supplied by the carrier in or upon which the goods are carried, fit and safe for their reception, carriage and preservation.

Article 15. Goods that may become a danger

Notwithstanding articles 11 and 13, the carrier or a performing party may decline to receive or to load, and may take such other measures as are reasonable, including unloading, destroying, or rendering goods harmless, if the goods are, or reasonably appear likely to become during the carrier's period of responsibility, an actual danger to persons, property or the environment.

Article 16. Sacrifice of the goods during the voyage by sea

Notwithstanding articles 11, 13, and 14, the carrier or a performing party-may sacrifice goods at sea when the sacrifice is reasonably made for the common safety or for the purpose of preserving from peril human life or other property involved in the common adventure.

CHAPTER 5. LIABILITY OF THE CARRIER FOR LOSS, DAMAGE OR DELAY

Article 17. Basis of liability

1. The carrier is liable for loss of or damage to the goods, as well as for delay in delivery, if the claimant proves that the loss, damage, or delay, or the event or circumstance that caused or contributed to it took place during the period of the carrier's responsibility as defined in chapter 4.

2. The carrier is relieved of all or part of its liability pursuant to paragraph 1 of this article if it proves that the cause or one of the causes of the loss, damage, or delay is not attributable to its fault or to the fault of any person referred to in article 18.

3. The carrier is also relieved of all or part of its liability pursuant to paragraph 1 of this article if, alternatively to proving the absence of fault as provided in paragraph 2 of this article, it proves that one or more of the following events or circumstances caused or contributed to the loss, damage, or delay:

(*a*) Act of God;

(*b*) Perils, dangers, and accidents of the sea or other navigable waters;

(*c*) War, hostilities, armed conflict, piracy, terrorism, riots, and civil commotions;

(*d*) Quarantine restrictions; interference by or impediments created by governments, public authorities, rulers, or people including detention, arrest, or seizure not attributable to the carrier or any person referred to in article 18;

(*e*) Strikes, lockouts, stoppages, or restraints of labour;

(*f*) Fire on the ship;

(*g*) Latent defects not discoverable by due diligence;

(*h*) Act or omission of the shipper, the documentary shipper, the controlling party, or any other person for whose acts the shipper or the documentary shipper is liable pursuant to article 33 or 34;

(*i*) Loading, handling, stowing, or unloading of the goods performed pursuant to an agreement in accordance with article 13, paragraph 2, unless the carrier or a performing party performs such activity on behalf of the shipper, the documentary shipper or the consignee;

(*j*) Wastage in bulk or weight or any other loss or damage arising from inherent defect, quality, or vice of the goods;

(*k*) Insufficiency or defective condition of packing or marking not performed by or on behalf of the carrier;

(*l*) Saving or attempting to save life at sea;

(*m*) Reasonable measures to save or attempt to save property at sea;

(*n*) Reasonable measures to avoid or attempt to avoid damage to the environment; or

(*o*) Acts of the carrier in pursuance of the powers conferred by articles 15 and 16.

4. Notwithstanding paragraph 3 of this article, the carrier is liable for all or part of the loss, damage, or delay:

(*a*) If the claimant proves that the fault of the carrier or of a person referred to in article 18 caused or contributed to the event or circumstance on which the carrier relies; or

(*b*) If the claimant proves that an event or circumstance not listed in paragraph 3 of this article contributed to the loss, damage, or delay, and the carrier cannot prove that this event or circumstance is not attributable to its fault or to the fault of any person referred to in article 18.

5. The carrier is also liable, notwithstanding paragraph 3 of this article, for all or part of the loss, damage, or delay if:

(*a*) The claimant proves that the loss, damage, or delay was or was probably caused by or contributed to by (i) the unseaworthiness of the ship; (ii) the improper crewing, equipping, and supplying of the ship; or (iii) the fact that the holds or other parts of the ship in which the goods are carried, or any containers supplied by the carrier in or upon which the goods are carried, were not fit and safe for reception, carriage, and preservation of the goods; and

(*b*) The carrier is unable to prove either that: (i) none of the events or circumstances referred to in subparagraph 5 (a) of this article caused the loss, damage, or delay; or (ii) it complied with its obligation to exercise due diligence pursuant to article 14.

6. When the carrier is relieved of part of its liability pursuant to this article, the carrier is liable only for that part of the loss, damage or delay that is attributable to the event or circumstance for which it is liable pursuant to this article.

Article 18. Liability of the carrier for other persons

The carrier is liable for the breach of its obligations under this Convention caused by the acts or omissions of:

(*a*) Any performing party;

(*b*) The master or crew of the ship;

(*c*) Employees of the carrier or a performing party; or

(*d*) Any other person that performs or undertakes to perform any of the carrier's obligations under the contract of carriage, to the extent that the person acts, either directly or indirectly, at the carrier's request or under the carrier's supervision or control.

Article 19. Liability of maritime performing parties

1. A maritime performing party is subject to the obligations and liabilities imposed on the carrier under this Convention and is entitled to the carrier's defences and limits of liability as provided for in this Convention if:

(*a*) The maritime performing party received the goods for carriage in a Contracting State, or delivered them in a Contracting State, or performed its activities with respect to the goods in a port in a Contracting State; and

(*b*) The occurrence that caused the loss, damage or delay took place; (i) during the period between the arrival of the goods at the port of loading of the ship and their departure from the port of discharge from the ship; (ii) while the maritime performing party had custody of the goods; or (iii) at any other time to the extent that it was participating in the performance of any of the activities contemplated by the contract of carriage.

2. If the carrier agrees to assume obligations other than those imposed on the carrier under this Convention, or agrees that the limits of its liability are higher than the limits specified under this Convention, a maritime performing party is not bound by this agreement unless it expressly agrees to accept such obligations or such higher limits.

3. A maritime performing party is liable for the breach of its obligations under this Convention caused by the acts or omissions of any person to which it has entrusted the performance of any of the carrier's obligations under the contract of carriage under the conditions set out in paragraph 1 of this article.

4. Nothing in this Convention imposes liability on the master or crew of the ship or on an employee of the carrier or of a maritime performing party.

Article 20. Joint and several liability

1. If the carrier and one or more maritime performing parties are liable for the loss of, damage to, or delay in delivery of the goods, their liability is joint and several but only up to the limits provided for under this Convention.

2. Without prejudice to article 61, the aggregate liability of all such persons shall not exceed the overall limits of liability under this Convention.

Article 21. Delay

Delay in delivery occurs when the goods are not delivered at the place of destination provided for in the contract of carriage within the time agreed.

Article 22. Calculation of compensation

1. Subject to article 59, the compensation payable by the carrier for loss of or damage to the goods is calculated by reference to the value of such goods at the place and time of delivery established in accordance with article 43.

2. The value of the goods is fixed according to the commodity exchange price or, if there is no such price, according to their market price or, if there is no commodity exchange price or market price, by reference to the normal value of the goods of the same kind and quality at the place of delivery.

3. In case of loss of or damage to the goods, the carrier is not liable for payment of any compensation beyond what is provided for in paragraphs 1 and 2 of this article except when the carrier and the shipper have agreed to calculate compensation in a different manner within the limits of chapter 16.

Article 23. Notice in case of loss, damage or delay

1. The carrier is presumed, in absence of proof to the contrary, to have delivered the goods according to their description in the contract particulars unless notice of loss of or damage to the goods, indicating the general nature of such loss or damage, was given to the carrier or the performing party that delivered the goods before or at the time of the delivery, or, if the loss or damage is not apparent, within seven working days at the place of delivery after the delivery of the goods.

2. Failure to provide the notice referred to in this article to the carrier or the performing party shall not affect the right to claim compensation for loss of or damage to the goods under this Convention, nor shall it affect the allocation of the burden of proof set out in article 17.

3. The notice referred to in this article is not required in respect of loss or damage that is ascertained in a joint inspection of the goods by the person to which they have been delivered and the carrier or the maritime performing party against which liability is being asserted.

4. No compensation in respect of delay is payable unless notice of loss due to delay was given to the carrier within twenty-one consecutive days of delivery of the goods.

5. When the notice referred to in this article is given to the performing party that delivered the goods, it has the same effect as if that notice was given to the carrier, and notice given to the carrier has the same effect as a notice given to a maritime performing party.

6. In the case of any actual or apprehended loss or damage, the parties to the dispute shall give all reasonable facilities to each other for inspecting and tallying the goods and shall provide access to records and documents relevant to the carriage of the goods.

Chapter 6. Additional provisions relating to particular stages of carriage

Article 24. Deviation

When pursuant to applicable law a deviation constitutes a breach of the carrier's obligations, such deviation of itself shall not deprive the carrier or a maritime performing party of any defence or limitation of this Convention, except to the extent provided in article 61.

Article 25. Deck cargo on ships

1. Goods may be carried on the deck of a ship only if:

(*a*) Such carriage is required by law;

(*b*) They are carried in or on containers or vehicles that are fit for deck carriage, and the decks are specially fitted to carry such containers or vehicles; or

(*c*) The carriage on deck is in accordance with the contract of carriage, or the customs, usages or practices of the trade in question.

2. The provisions of this Convention relating to the liability of the carrier apply to the loss of, damage to or delay in the delivery of goods carried on deck pursuant to paragraph 1 of this article, but the carrier is not liable for loss of or damage to such goods, or delay in their delivery, caused by the special risks involved in their carriage on deck when the goods are carried in accordance with subparagraphs 1 (a) or (c) of this article.

3. If the goods have been carried on deck in cases other than those permitted pursuant to paragraph 1 of this article, the carrier is liable for loss of or damage to the goods or delay in their delivery that is exclusively caused by their carriage on deck, and is not entitled to the defences provided for in article 17.

4. The carrier is not entitled to invoke subparagraph 1 (c) of this article against a third party that has acquired a negotiable transport document or a negotiable electronic transport record in good faith, unless the contract particulars state that the goods may be carried on deck.

5. If the carrier and shipper expressly agreed that the goods would be carried under deck, the carrier is not entitled to the benefit of the limitation of liability for any loss of, damage to or delay in the delivery of the goods to the extent that such loss, damage, or delay resulted from their carriage on deck.

Article 26. Carriage preceding or subsequent to sea carriage

When loss of or damage to goods, or an event or circumstance causing a delay in their delivery, occurs during the carrier's period of responsibility but solely before their loading onto the ship or solely after their discharge from the ship, the provisions of this Convention do not prevail over those provisions of another international instrument that, at the time of such loss, damage or event or circumstance causing delay:

(*a*) Pursuant to the provisions of such international instrument would have applied to all or any of the carrier's activities if the shipper had made a separate and direct contract with the carrier in respect of the particular stage of carriage where the loss of, or damage to goods, or an event or circumstance causing delay in their delivery occurred;

(*b*) Specifically provide for the carrier's liability, limitation of liability, or time for suit; and

(*c*) Cannot be departed from by contract either at all or to the detriment of the shipper under that instrument.

Chapter 7. Obligations of the shipper to the carrier

Article 27. Delivery for carriage

1. Unless otherwise agreed in the contract of carriage, the shipper shall deliver the goods ready for carriage. In any event, the shipper shall deliver the goods in such condition that they will withstand the intended carriage, including their loading, handling, stowing, lashing and securing, and unloading, and that they will not cause harm to persons or property.

2. The shipper shall properly and carefully perform any obligation assumed under an agreement made pursuant to article 13, paragraph 2.

3. When a container is packed or a vehicle is loaded by the shipper, the shipper shall properly and carefully stow, lash and secure the contents in or on the container or vehicle, and in such a way that they will not cause harm to persons or property.

Article 28. Cooperation of the shipper and the carrier in providing information and instructions

The carrier and the shipper shall respond to requests from each other to provide information and instructions required for the proper handling and carriage of the goods if the information is in the requested party's possession or the instructions are within the requested party's reasonable ability to provide and they are not otherwise reasonably available to the requesting party.

Article 29. Shipper's obligation to provide information, instructions and documents

1. The shipper shall provide to the carrier in a timely manner such information, instructions and documents relating to the goods that are not otherwise reasonably available to the carrier, and that are reasonably necessary:

(*a*) For the proper handling and carriage of the goods, including precautions to be taken by the carrier or a performing party; and

(*b*) For the carrier to comply with law, regulations or other requirements of public authorities in connection with the intended carriage, provided that the carrier notifies the shipper in a timely manner of the information, instructions and documents it requires.

2. Nothing in this article affects any specific obligation to provide certain information, instructions and documents related to the goods pursuant to law, regulations or other requirements of public authorities in connection with the intended carriage.

Article 30. Basis of shipper s liability to the carrier

1. The shipper is liable for loss or damage sustained by the carrier if the carrier proves that such loss or damage was caused by a breach of the shipper's obligations under this Convention.

2. Except in respect of loss or damage caused by a breach by the shipper of its obligations pursuant to articles 31, paragraph 2, and 32, the shipper is relieved of all or part of its liability if the cause or one of the causes of the loss or damage is not attributable to its fault or to the fault of any person referred to in article 34.

3. When the shipper is relieved of part of its liability pursuant to this article, the shipper is liable only for that part of the loss or damage that is attributable to its fault or to the fault of any person referred to in article 34.

Article 31. Information for compilation of contract particulars

1. The shipper shall provide to the carrier, in a timely manner, accurate information required for the compilation of the contract particulars and the issuance of the transport documents or electronic transport records, including the particulars referred to in article

36, paragraph 1; the name of the party to be identified as the shipper in the contract particulars; the name of the consignee, if any; and the name of the person to whose order the transport document or electronic transport record is to be issued, if any.

2. The shipper is deemed to have guaranteed the accuracy at the time of receipt by the carrier of the information that is provided according to paragraph 1 of this article. The shipper shall indemnify the carrier against loss or damage resulting from the inaccuracy of such information.

Article 32. Special rules on dangerous goods

When goods by their nature or character are, or reasonably appear likely to become, a danger to persons, property or the environment:

(*a*) The shipper shall inform the carrier of the dangerous nature or character of the goods in a timely manner before they are delivered to the carrier or a performing party. If the shipper fails to do so and the carrier or performing party does not otherwise have knowledge of their dangerous nature or character, the shipper is liable to the carrier for loss or damage resulting from such failure to inform; and

(*b*) The shipper shall mark or label dangerous goods in accordance with any law, regulations or other requirements of public authorities that apply during any stage of the intended carriage of the goods. If the shipper fails to do so, it is liable to the carrier for loss or damage resulting from such failure.

Article 33. Assumption of shipper's rights and obligations by the documentary shipper

1. A documentary shipper is subject to the obligations and liabilities imposed on the shipper pursuant to this chapter and pursuant to article 55, and is entitled to the shipper's rights and defences provided by this chapter and by chapter 13.

2. Paragraph 1 of this article does not affect the obligations, liabilities, rights or defences of the shipper.

Article 34. Liability of the shipper for other persons

The shipper is liable for the breach of its obligations under this Convention caused by the acts or omissions of any person, including employees, agents and subcontractors, to which it has entrusted the performance of any of its obligations, but the shipper is not liable for acts or omissions of the carrier or a performing party acting on behalf of the carrier, to which the shipper has entrusted the performance of its obligations.

CHAPTER 8. TRANSPORT DOCUMENTS AND ELECTRONIC TRANSPORT RECORDS

Article 35. Issuance of the transport document or the electronic transport record

Unless the shipper and the carrier have agreed not to use a transport document or an electronic transport record, or it is the custom, usage or practice of the trade not to use one, upon delivery of the goods for carriage to the carrier or performing party, the shipper or, if the shipper consents, the documentary shipper, is entitled to obtain from the carrier, at the shipper's option:

(*a*) A non-negotiable transport document or, subject to article 8, subparagraph (a), a non-negotiable electronic transport record; or

(*b*) An appropriate negotiable transport document or, subject to article 8, subparagraph (a), a negotiable electronic transport record, unless the shipper and the carrier have agreed not to use a negotiable transport document or negotiable electronic transport record, or it is the custom, usage or practice of the trade not to use one of the trade not to use one.

Article 36. Contract particulars

1. The contract particulars in the transport document or electronic transport record referred to in article 35 shall include the following information, as furnished by the shipper:

(*a*) A description of the goods as appropriate for the transport;

(*b*) The leading marks necessary for identification of the goods;

(*c*) The number of packages or pieces, or the quantity of goods; and

(*d*) The weight of the goods, if furnished by the shipper.

2. The contract particulars in the transport document or electronic transport record referred to in article 35 shall also include:

(*a*) A statement of the apparent order and condition of the goods at the time the carrier or a performing party receives them for carriage;

(*b*) The name and address of the carrier;

(*c*) The date on which the carrier or a performing party received the goods, or on which the goods were loaded on board the ship, or on which the transport document or electronic transport record was issued; and

(*d*) If the transport document is negotiable, the number of originals of the negotiable transport document, when more than one original is issued.

3. The contract particulars in the transport document or electronic transport record referred to in article 35 shall further include:

(*a*) The name and address of the consignee, if named by the shipper;

(*b*) The name of a ship, if specified in the contract of carriage;

(*c*) The place of receipt and, if known to the carrier, the place of delivery; and

(*d*) The port of loading and the port of discharge, if specified in the contract of carriage.

4. For the purposes of this article, the phrase "apparent order and condition of the goods" in subparagraph 2 (a) of this article refers to the order and condition of the goods based on:

(*a*) A reasonable external inspection of the goods as packaged at the time the shipper delivers them to the carrier or a performing party; and

(*b*) Any additional inspection that the carrier or a performing party actually performs before issuing the transport document or electronic transport record.

Article 37. Identity of the carrier

1. If a carrier is identified by name in the contract particulars, any other information in the transport document or electronic transport record relating to the identity of the carrier shall have no effect to the extent that it is inconsistent with that identification.

2. If no person is identified in the contract particulars as the carrier as require pursuant to article 36, subparagraph 2 (b), but the contract particulars indicate that the goods have been loaded on board a named ship, the registered owner of that ship is presumed to be the carrier, unless it proves that the ship was under a bareboat charter at the time of the carriage and it identifies this bareboat charterer and indicates its address, in which case this bareboat charterer is presumed to be the carrier. Alternatively, the registered owner may rebut the presumption of being the carrier by identifying the carrier and indicating its address. The bareboat charterer may rebut any presumption of being the carrier in the same manner.

3. Nothing in this article prevents the claimant from proving that any person other than a person identified in the contract particulars or pursuant to paragraph 2 of this article is the carrier.

Article 38. Signature

1. A transport document shall be signed by the carrier or a person acting on its behalf.

2. An electronic transport record shall include the electronic signature of the carrier or a person acting on its behalf. Such electronic signature shall identify the signatory in relation to the electronic transport record and indicate the carrier's authorization of the electronic transport record.

Article 39. Deficiencies in the contract particulars

1. The absence or inaccuracy of one or more of the contract particulars referred to in article 36, paragraphs 1, 2 or 3, does not of itself affect the legal character or validity of the transport document or of the electronic transport record.

2. If the contract particulars include the date but fail to indicate its significance, the date is deemed to be:

(*a*) The date on which all of the goods indicated in the transport document or electronic transport record were loaded on board the ship, if the contract particulars indicate that the goods have been loaded on board a ship; or

(*b*) The date on which the carrier or a performing party received the goods, if the contract particulars do not indicate that the goods have been loaded on board a ship.

3. If the contract particulars fail to state the apparent order and condition of the goods at the time the carrier or a performing party receives them, the contract particulars are deemed to have stated that the goods were in apparent good order and condition at the time the carrier or a performing party received them.

Article 40. Qualifying the information relating to the goods in the contract particulars

1. The carrier shall qualify the information referred to in article 36, paragraph 1, to indicate that the carrier does not assume responsibility for the accuracy of the information furnished by the shipper if:

(*a*) The carrier has actual knowledge that any material statement in the transport document or electronic transport record is false or misleading; or

(*b*) The carrier has reasonable grounds to believe that a material statement in the transport document or electronic transport record is false or misleading.

2. Without prejudice to paragraph 1 of this article, the carrier may qualify the information referred to in article 36, paragraph 1, in the circumstances and in the manner set out in paragraphs 3 and 4 of this article to indicate that the carrier does not assume responsibility for the accuracy of the information furnished by the shipper.

3. When the goods are not delivered for carriage to the carrier or a performing party in a closed container or vehicle, or when they are delivered in a closed container or vehicle and the carrier or a performing party actually inspects them, the carrier may qualify the information referred to in article 36, paragraph 1, if:

(*a*) The carrier had no physically practicable or commercially reasonable means of checking the information furnished by the shipper, in which case it may indicate which information it was unable to check; or

(*b*) The carrier has reasonable grounds to believe the information furnished by the shipper to be inaccurate, in which case it may include a clause providing what it reasonably considers accurate information.

4. When the goods are delivered for carriage to the carrier or a performing party in a closed container or vehicle, the carrier may qualify the information referred to in:

(*a*) Article 36, subparagraphs 1 (a), (b), or (c), if:

(i) The goods inside the container or vehicle have not actually been inspected by the carrier or a performing party; and

(ii) either the carrier nor a performing party otherwise has actual knowledge of its contents before issuing the transport document or the electronic transport record; and

(*b*) Article 36, subparagraph 1 (d), if:

(i) Neither the carrier nor a performing party weighed the container or vehicle, and the shipper and the carrier had not agreed prior to the shipment that the container or vehicle would be weighed and the weight would be included in the contract particulars; or

(ii) There was no physically practicable or commercially reasonable means of checking the weight of the container or vehicle.

Article 41. Evidentiary effect of the contract particulars

Except to the extent that the contract particulars have been qualified in the circumstances and in the manner set out in article 40:

(*a*) A transport document or an electronic transport record is prima facie evidence of the carrier's receipt of the goods as stated in the contract particulars;

(*b*) Proof to the contrary by the carrier in respect of any contract particulars shall not be admissible, when such contract particulars are included in:

(i) A negotiable transport document or a negotiable electronic transport record that is transferred to a third party acting in good faith; or

(ii) A non-negotiable transport document that indicates that it must be surrendered in order to obtain delivery of the goods and is transferred to the consignee acting in good faith;

(*c*) Proof to the contrary by the carrier shall not be admissible against a consignee that in good faith has acted in reliance on any of the following contract particulars included in a non-negotiable transport document or a non-negotiable electronic transport record:

(i) The contract particulars referred to in article 36, paragraph 1, when such contract particulars are furnished by the carrier;

(ii) The number, type and identifying numbers of the containers, but not the identifying numbers of the container seals; and

(iii) The contract particulars referred to in article 36, paragraph 2.

Article 42. "Freight prepaid"

If the contract particulars contain the statement "freight prepaid" or a statement of a similar nature, the carrier cannot assert against the holder or the consignee the fact that the freight has not been paid. This article does not apply if the holder or the consignee is also the shipper.

Chapter 9. Delivery of the goods

Article 43. Obligation to accept delivery

When the goods have arrived at their destination, the consignee that demands delivery of the goods under the contract of carriage shall accept delivery of the goods at the time or within the time period and at the location agreed in the contract of carriage or, failing such agreement, at the time and location at which, having regard to the terms of the contract, the customs, usages or practices of the trade and the circumstances of the carriage, delivery could reasonably be expected.

Article 44. Obligation to acknowledge receipt

On request of the carrier or the performing party that delivers the goods, the consignee shall acknowledge receipt of the goods from the carrier or the performing party in the manner that is customary at the place of delivery. The carrier may refuse delivery if the consignee refuses to acknowledge such receipt.

Article 45. Delivery when no negotiable transport document or negotiable electronic transport record is issued

When neither a negotiable transport document nor a negotiable electronic transport record has been issued:

(*a*) The carrier shall deliver the goods to the consignee at the time and location referred to in article 43. The carrier may refuse delivery if the person claiming to be the consignee does not properly identify itself as the consignee on the request of the carrier;

(*b*) If the name and address of the consignee are not referred to in the contract particulars, the controlling party shall prior to or upon the arrival of the goods at the place of destination advise the carrier of such name and address;

(*c*) Without prejudice to article 48, paragraph 1, if the goods are not deliverable because (i) the consignee, after having received a notice of arrival, does not, at the time or within the time period referred to in article 43, claim delivery of the goods from the carrier after their arrival at the place of destination, (ii) the carrier refuses delivery because the person claiming to be the consignee does not properly identify itself as the consignee, or (iii) the carrier is, after reasonable effort, unable to locate the consignee in order to request delivery instructions, the carrier may so advise the controlling party and request instructions in respect of the delivery of the goods. If, after reasonable effort, the carrier is unable to locate the controlling party, the carrier may so advise the shipper and request instructions in respect of the delivery of the goods. If, after reasonable effort, the carrier is unable to locate the shipper, the carrier may so advise the documentary shipper and request instructions in respect of the delivery of the goods;

(*d*) The carrier that delivers the goods upon instruction of the controlling party, the shipper or the documentary shipper pursuant to subparagraph (c) of this article is discharged from its obligations to deliver the goods under the contract of carriage.

Article 46. Delivery when a non-negotiable transport documen that requires surrender is issued

When a non-negotiable transport document has been issued that indicates that it shall be surrendered in order to obtain delivery of the goods:

(*a*) The carrier shall deliver the goods at the time and location referred to in article 43 to the consignee upon the consignee properly identifying itself on the request of the carrier and surrender of the non-negotiable document. The carrier may refuse delivery if the person claiming to be the consignee fails to properly identify itself on the request of the carrier, and shall refuse delivery if the non negotiable document is not surrendered. If more than one original of the non negotiable document has been issued, the surrender of one original will suffice and the other originals cease to have any effect or validity;

(*b*) Without prejudice to article 48, paragraph 1, if the goods are not deliverable because (i) the consignee, after having received a notice of arrival, does not, at the time or within the time period referred to in article 43, claim delivery of the goods from the carrier after their arrival at the place of destination, (ii) the carrier refuses delivery because the person claiming to be the consignee does not properly identify itself as the consignee or does not surrender the document, or (iii) the carrier is, after reasonable effort, unable to locate the consignee in order to request delivery instructions, the carrier may so advise the shipper and request instructions in respect of the delivery of the goods. If, after reasonable effort, the carrier is unable to locate the shipper, the carrier may so advise the documentary shipper and request instructions in respect of the delivery of the goods;

(*c*) The carrier that delivers the goods upon instruction of the shipper or the documentary shipper pursuant to subparagraph (b) of, this article is discharged from its obli-

gation to deliver the goods under the contract of carriage, irrespective of whether the non-negotiable transport document has been surrendered to it.

Article 47. Delivery when a negotiable transport document or negotiable electronic transport record is issued

1. When a negotiable transport document or a negotiable electronic transport record has been issued:

(*a*) The holder of the negotiable transport document or negotiable electronic transport record is entitled to claim delivery of the goods from the carrier after they have arrived at the place of destination, in which event the carrier shall deliver the goods at the time and location referred to in article 43 to the holder:

(i) Upon surrender of the negotiable transport document and, if the holder is one of the persons referred to in article 1, subparagraph 10 (a) (i), upon the holder properly identifying itself; or

(ii) Upon demonstration by the holder, in accordance with the procedures referred to in article 9, paragraph 1, that it is the holder of the negotiable electronic transport record;

(*b*) The carrier shall refuse delivery if the requirements of subparagraph (a) (i) or (a) (ii) of this paragraph are not met;

(*c*) If more than one original of the negotiable transport document has been issued, and the number of originals is stated in that document, the surrender of one original will suffice and the other originals cease to have any effect or validity. When a negotiable electronic transport record has been used, such electronic transport record ceases to have any effect or validity upon delivery to the holder in accordance with the procedures required by article 9, paragraph 1.

2. Without prejudice to article 48, paragraph 1, if the negotiable transport document or the negotiable electronic transport record expressly states that the goods may be delivered without the surrender of the transport document or the electronic transport record, the following rules apply:

(*a*) If the goods are not deliverable because (i) the holder, after having received a notice of arrival, does not, at the time or within the time period referred to in article 43, claim delivery of the goods from the carrier after their arrival at the place of destination, (ii) the carrier refuses delivery because the person claiming to be a holder does not properly identify itself as one of the persons referred to in article 1, subparagraph 10 (a) (i), or (iii) the carrier is, after reasonable effort, unable to locate the holder in order to request delivery instructions, the carrier may so advise the shipper and request instructions in respect of the delivery of the goods. If, after reasonable effort, the carrier is unable to locate the shipper, the carrier may so advise the documentary shipper and request instructions in respect of the delivery of the goods;

(*b*) The carrier that delivers the goods upon instruction of the shipper or the documentary shipper in accordance with subparagraph 2 (a) of this article is discharged from its obligation to deliver the goods under the contract of carriage to the holder, irrespective of whether the negotiable transport document has been surrendered to it, or the person

claiming delivery under a negotiable electronic transport record has demonstrated, in accordance with the procedures referred to in article 9, paragraph 1, that it is the holder;

(*c*) The person giving instructions under subparagraph 2 (a) of this article shall indemnify the carrier against loss arising from its being held liable to the holder under subparagraph 2 (e) of this article. The carrier may refuse to follow those instructions if the person fails to provide adequate security as the carrier may reasonably request;

(*d*) A person that becomes a holder of the negotiable transport document or the negotiable electronic transport record after the carrier has delivered the goods pursuant to subparagraph 2 (b) of this article, but pursuant to contractual or other arrangements made before such delivery acquires rights against the carrier under the contract of carriage, other than the right to claim delivery of the goods;

(*e*) Notwithstanding subparagraphs 2 (b) and 2 (d) of this article, a holder that becomes a holder after such delivery, and that did not have and could not reasonably have had knowledge of such delivery at the time it became a holder, acquires the rights incorporated in the negotiable transport document or negotiable electronic transport record. When the contract particulars state the expected time of arrival of the goods, or indicate how to obtain information as to whether the goods have been delivered, it is presumed that the holder at the time that it became a holder had or could reasonably have had knowledge of the delivery of the goods.

Article 48. Goods remaining undelivered

1. For the purposes of this article, goods shall be deemed to have remained undelivered only if, after their arrival at the place of destination:

(*a*) The consignee does not accept delivery of the goods pursuant to this chapter at the time and location referred to in article 43;

(*b*) The controlling party, the holder, the shipper or the documentary shipper cannot be found or does not give the carrier adequate instructions pursuant to articles 45, 46 and 47;

(*c*) The carrier is entitled or required to refuse delivery pursuant to articles 44, 45, 46 and 47;

(*d*) The carrier is not allowed to deliver the goods to the consignee pursuant to the law or regulations of the place at which delivery is requested; or

(*e*) The goods are otherwise undeliverable by the carrier.

2. Without prejudice to any other rights that the carrier may have against the shipper, controlling party or consignee, if the goods have remained undelivered, the carrier may, at the risk and expense of the person entitled to the goods, take such action in respect of the goods as circumstances may reasonably require, including:

(*a*) To store the goods at any suitable place;

(*b*) To unpack the goods if they are packed in containers or vehicles, or to act otherwise in respect of the goods, including by moving them; and

(*c*) To cause the goods to be sold or destroyed in accordance with the practices or pursuant to the law or regulations of the place where the goods are located at the time.

3. The carrier may exercise the rights under paragraph 2 of this article only after it has given reasonable notice of the intended action under paragraph 2 of this article to the person stated in the contract particulars as the person, if any, to be notified of the arrival of the goods at the place of destination, and to one of the following persons in the order indicated, if known to the carrier: the consignee, the controlling party or the shipper.

4. If the goods are sold pursuant to subparagraph 2 (c) of this article, the carrier shall hold the proceeds of the sale for the benefit of the person entitled to the goods, subject to the deduction of any costs incurred by the carrier and any other amounts that are due to the carrier in connection with the carriage of those goods.

5. The carrier shall not be liable for loss of or damage to goods that occurs during the time that they remain undelivered pursuant to this article unless the claimant proves that such loss or damage resulted from the failure by the carrier to take steps that would have been reasonable in the circumstances to preserve the goods and that the carrier knew or ought to have known that the loss or damage to the goods would result from its failure to take such steps.

Article 49. Retention of goods

Nothing in this Convention affects a right of the carrier or a performing party that may exist pursuant to the contract of carriage or the applicable law to retain the goods to secure the payment of sums due.

Chapter 10. Rights of the controlling party

Article 50. Exercise and extent of right of control

1. The right of control may be exercised only by the controlling party and is limited to:

(*a*) The right to give or modify instructions in respect of the goods that do not constitute a variation of the contract of carriage;

(*b*) The right to obtain delivery of the goods at a scheduled port of call or, in respect of inland carriage, any place en route; and

(*c*) The right to replace the consignee by any other person including the controlling party.

2. The right of control exists during the entire period of responsibility of the carrier, as provided in article 12, and ceases when that period expires.

Article 51. Identity of the controlling party and transfer of the right of control

1. Except in the cases referred to in paragraphs 2, 3 and 4 of this article:

(*a*) The shipper is the controlling party unless the shipper, when the contract of carriage is concluded, designates the consignee, the documentary shipper or another person as the controlling party;

(*b*) The controlling party is entitled to transfer the right of control to another person. The transfer becomes effective with respect to the carrier upon its notification of the transfer by the transferor, and the transferee becomes the controlling party; and

(*c*) The controlling party shall properly identify itself when it exercises the right of control.

2. When a non-negotiable transport document has been issued that indicates that it shall be surrendered in order to obtain delivery of the goods:

(*a*) The shipper is the controlling party and may transfer the right of control to the consignee named in the transport document by transferring the document to that person without endorsement. If more than one original of the document was issued, all originals shall be transferred in order to effect a transfer of the right of control; and

(*b*) In order to exercise its right of control, the controlling party shall produce the document and properly identify itself. If more than one original of the document was issued, all originals shall be produced, failing which the right of control cannot be exercised.

3. When a negotiable transport document is issued:

(*a*) The holder or, if more than one original of the negotiable transport document is issued, the holder of all originals is the controlling party;

(*b*) The holder may transfer the right of control by transferring the negotiable transport document to another person in accordance with article 57. If more than one original of that document was issued, all originals shall be transferred to that person in order to effect a transfer of the right of control; and

(*c*) In order to exercise the right of control, the holder shall produce the negotiable transport document to the carrier, and if the holder is one of the persons referred to in article 1, subparagraph 10 (a) (i), the holder shall properly identify itself. If more than one original of the document was issued, all originals shall be produced, failing which the right of control cannot be exercised.

4. When a negotiable electronic transport record is issued:

(*a*) The holder is the controlling party;

(*b*) The holder may transfer the right of control to another person by transferring the negotiable electronic transport record in accordance with the procedures referred to in article 9, paragraph 1; and

(*c*) In order to exercise the right of control, the holder shall demonstrate, in accordance with the procedures referred to in article 9, paragraph 1, that it is the holder.

Article 52. Carrier's execution of instructions

1. Subject to paragraphs 2 and 3 of this article, the carrier shall execute the instructions referred to in article 50 if:

(*a*) The person giving such instructions is entitled to exercise the right of control;

(*b*) The instructions can reasonably be executed according to their terms at the moment that they reach the carrier; and

(*c*) The instructions will not interfere with the normal operations of the carrier, including its delivery practices.

2. In any event, the controlling party shall reimburse the carrier for any reasonable additional expense that the carrier may incur and shall indemnify the carrier against loss

or damage that the carrier may suffer as a result of diligently executing any instruction pursuant to this article, including compensation that the carrier may become liable to pay for loss of or damage to other goods being carried.

3. The carrier is entitled to obtain security from the controlling party for the amount of additional expense, loss or damage that the carrier reasonably expects will arise in connection with the execution of an instruction pursuant to this article. The carrier may refuse to carry out the instructions if no such security is provided.

4. The carrier's liability for loss of or damage to the goods or for delay in delivery resulting from its failure to comply with the instructions of the controlling party in breach of its obligation pursuant to paragraph 1 of this article shall be subject to articles 17 to 23, and the amount of the compensation payable by the carrier shall be subject to articles 59 to 61.

Article 53. Deemed delivery

Goods that are delivered pursuant to an instruction in accordance with article 52, paragraph 1, are deemed to be delivered at the place of destination, and the provisions of chapter 9 relating to such delivery apply to such goods.

Article 54. Variations to the contract of carriage

1. The controlling party is the only person that may agree with the carrier to variations to the contract of carriage other than those referred to in article 50, subparagraphs 1 (b) and (c).

2. Variations to the contract of carriage, including those referred to in article 50, subparagraphs 1 (b) and (c), shall be stated in a negotiable transport document or in a non-negotiable transport document that requires surrender, or incorporated in a negotiable electronic transport record, or, upon the request of the controlling party, shall be stated in a non-negotiable transport document or incorporated in a non-negotiable electronic transport record. If so stated or incorporated, such variations shall be signed in accordance with article 38.

Article 55. Providing additional information, instructions or documents to carrier

1. The controlling party, on request of the carrier or a performing party, shall provide in a timely manner information, instructions or documents relating to the goods not yet provided by the shipper and not otherwise reasonably available to the carrier that the carrier may reasonably need to perform its obligations under the contract of carriage.

2. If the carrier, after reasonable effort, is unable to locate the controlling party or the controlling party is unable to provide adequate information, instructions or documents to the carrier, the shipper shall provide them. If the carrier, after reasonable effort, is unable to locate the shipper, the documentary shipper shall provide such information, instructions or documents.

Article 56. Variation by agreement

The parties to the contract of carriage may vary the effect of articles 50, subparagraphs 1 (b) and (c), 50, paragraph 2, and 52. The parties may also restrict or exclude the transferability of the right of control referred to in article 51, subparagraph 1 (b).

Chapter 11. Transfers of rights

Article 57. When a negotiable transport document or negotiable electronic transport record is issued

1. When a negotiable transport document is issued, the holder may transfer the rights incorporated in the document by transferring it to another person:

(*a*) Duly endorsed either to such other person or in blank, if an order document; or

(*b*) Without endorsement, if: (i) a bearer document or a blank endorsed document; or (ii) a document made out to the order of a named person and the transfer is between the first holder and the named person.

2. When a negotiable electronic transport record is issued, its holder may transfer the rights incorporated in it, whether it be made out to order or to the order of a named person, by transferring the electronic transport record in accordance with the procedures referred to in article 9, paragraph 1.

Article 58. Liability of holder

1. Without prejudice to article 55, a holder that is not the shipper and that does not exercise any right under the contract of carriage does not assume any liability under the contract of carriage solely by reason of being a holder.

2. A holder that is not the shipper and that exercises any right under the contract of carriage assumes any liabilities imposed on it under the contract of carriage to the extent that such liabilities are incorporated in or ascertainable from the negotiable transport document or the negotiable electronic transport record.

3. For the purposes of paragraphs 1 and 2 of this article, a holder that is not the shipper does not exercise any right under the contract of carriage solely because:

(*a*) It agrees with the carrier, pursuant to article 10, to replace a negotiable transport document by a negotiable electronic transport record or to replace a negotiable electronic transport record by a negotiable transport document; or

(*b*) It transfers its rights pursuant to article 57.

Chapter 12. Limits of liability

Article 59. Limits of liability

1. Subject to articles 60 and 61, paragraph 1, the carrier's liability for breaches of its obligations under this Convention is limited to 875 units of account per package or other shipping unit, or 3 units of account per kilogram of the gross weight of the goods that are the subject of the claim or dispute, whichever amount is the higher, except when the value of the goods has been declared by the shipper and included in the contract particulars, or

when a higher amount than the amount of limitation of liability set out in this article has been agreed upon between the carrier and the shipper.

2. When goods are carried in or on a container, pallet or similar article of transport used to consolidate goods, or in or on a vehicle, the packages or shipping units enumerated in the contract particulars as packed in or on such article of transport or vehicle are deemed packages or shipping units. If not so enumerated, the goods in or on such article of transport or vehicle are deemed one shipping unit.

3. The unit of account referred to in this article is the Special Drawing Right as defined by the International Monetary Fund. The amounts referred to in this article are to be converted into the national currency of a State according to the value of such currency at the date of judgement or award or the date agreed upon by the parties. The value of a national currency, in terms of the Special Drawing Right, of a Contracting State that is a member of the International Monetary Fund is to be calculated in accordance with the method of valuation applied by the International Monetary Fund in effect at the date in question for its operations and transactions. The value of a national currency, in terms of the Special Drawing Right, of a Contracting State that is not a member of the International Monetary Fund is to be calculated in a manner to be determined by that State.

Article 60. Limits of liability for loss caused by delay

Subject to article 61, paragraph 2, compensation for loss of or damage to the goods due to delay shall be calculated in accordance with article 22 and liability for economic loss due to delay is limited to an amount equivalent to two and one-half times the freight payable on the goods delayed. The total amount payable pursuant to this article and article 59, paragraph 1, may not exceed the limit that would be established pursuant to article 59, paragraph 1, in respect of the total loss of the goods concerned.

Article 61. Loss of the benefit of limitation of liability

1. Neither the carrier nor any of the persons referred to in article 18 is entitled to the benefit of the limitation of liability as provided in article 59, or as provided in the contract of carriage, if the claimant proves that the loss resulting from the breach of the carrier's obligation under this Convention was attributable to a personal act or omission of the person claiming a right to limit done with the intent to cause such loss or recklessly and with knowledge that such loss would probably result.

2. Neither the carrier nor any of the persons mentioned in article 18 is entitled to the benefit of the limitation of liability as provided in article 60 if the claimant proves that the delay in delivery resulted from a personal act or omission of the person claiming a right to limit done with the intent to cause the loss due to delay or recklessly and with knowledge that such loss would probably result.

Chapter 13. Time for suit

Article 62. Period of time for suit

1. No judicial or arbitral proceedings in respect of claims or disputes arising from a breach of an obligation under this Convention may be instituted after the expiration of a period of two years.

2. The period referred to in paragraph 1 of this article commences on the day on which the carrier has delivered the goods or, in cases in which no goods have been delivered or only part of the goods have been delivered, on the last day on which the goods should have been delivered. The day on which the period commences is not included in the period.

3. Notwithstanding the expiration of the period set out in paragraph 1 of this article, one party may rely on its claim as a defence or for the purpose of set-off against a claim asserted by the other party.

Article 63. Extension of time for suit

The period provided in article 62 shall not be subject to suspension or interruption, but the person against which a claim is made may at any time during the running of the period extend that period by a declaration to the claimant. This period may be further extended by another declaration or declarations.

Article 64. Action for indemnity

An action for indemnity by a person held liable may be instituted after the expiration of the period provided in article 62 if the indemnity action is instituted within the later of:

(*a*) The time allowed by the applicable law in the jurisdiction where proceedings are instituted; or

(*b*) Ninety days commencing from the day when the person instituting the action for indemnity has either settled the claim or been served with process in the action against itself, whichever is earlier.

Article 65. Actions against the person identified as the carrier

An action against the bareboat charterer or the person identified as the carrier pursuant to article 37, paragraph 2, may be instituted after the expiration of the period provided in article 62 if the action is instituted within the later of:

(*a*) The time allowed by the applicable law in the jurisdiction where proceedings are instituted; or

(*b*) Ninety days commencing from the day when the carrier has been identified, or the registered owner or bareboat charterer has rebutted the presumption that it is the carrier, pursuant to article 37, paragraph 2.

Chapter 14. Jurisdiction

Article 66. Actions against the carrier

Unless the contract of carriage contains an exclusive choice of court agreement that complies with article 67 or 72, the plaintiff has the right to institute judicial proceedings under this Convention against the carrier:

(*a*) In a competent court within the jurisdiction of which is situated one of the following places:

(i) The domicile of the carrier;

(ii) The place of receipt agreed in the contract of carriage;

(iii) The place of delivery agreed in the contract of carriage; or

(iv) The port where the goods are initially loaded on a ship or the port where the goods are finally discharged from a ship; or

(b) In a competent court or courts designated by an agreement between the shipper and the carrier for the purpose of deciding claims against the carrier that may arise under this Convention.

Article 67. Choice of court agreements

1. The jurisdiction of a court chosen in accordance with article 66, subparagraph (b), is exclusive for disputes between the parties to the contract only if the parties so agree and the agreement conferring jurisdiction:

(*a*) Is contained in a volume contract that clearly states the names and addresses of the parties and either (i) is individually negotiated or (ii) contains a prominent statement that there is an exclusive choice of court agreement and specifies the sections of the volume contract containing that agreement; and

(*b*) Clearly designates the courts of one Contracting State or one or more specific courts of one Contracting State.

2. A person that is not a party to the volume contract is bound by an exclusive choice of court agreement concluded in accordance with paragraph 1 of this article only if:

(*a*) The court is in one of the places designated in article 66, subparagraph (a);

(*b*) That agreement is contained in the transport document or electronic transport record;

(*c*) That person is given timely and adequate notice of the court where the action shall be brought and that the jurisdiction of that court is exclusive; and

(*d*) The law of the court seized recognizes that that person may be bound by the exclusive choice of court agreement.

Article 68. Actions against the maritime performing party

The plaintiff has the right to institute judicial proceedings under this Convention against the maritime performing party in a competent court within the jurisdiction of which is situated one of the following places:

(*a*) The domicile of the maritime performing party; or

(*b*) The port where the goods are received by the maritime performing party, the port where the goods are delivered by the maritime performing party or the port in which the maritime performing party performs its activities with respect to the goods.

Article 69. No additional bases of jurisdiction

Subject to articles 71 and 72, no judicial proceedings under this Convention against the carrier or a maritime performing party may be instituted in a court not designated pursuant to article 66 or 68.

Article 70. Arrest and provisional or protective measures

Nothing in this Convention affects jurisdiction with regard to provisional or protective measures, including arrest. A court in a State in which a provisional or protective measure was taken does not have jurisdiction to determine the case upon its merits unless:

(*a*) The requirements of this chapter are fulfilled; or

(*b*) An international convention that applies in that State so provides.

Article 71. Consolidation and removal of actions

1. Except when there is an exclusive choice of court agreement that is binding pursuant to article 67 or 72, if a single action is brought against both the carrier and the maritime performing party arising out of a single occurrence, the action may be instituted only in a court designated pursuant to both article 66 and article 68. If there is no such court, such action may be instituted in a court designated pursuant to article 68, subparagraph (b), if there is such a court.

2. Except when there is an exclusive choice of court agreement that is binding pursuant to article 67 or 72, a carrier or a maritime performing party that institutes an action seeking a declaration of non-liability or any other action that would deprive a person of its right to select the forum pursuant to article 66 or 68 shall, at the request of the defendant, withdraw that action once the defendant has chosen a court designated pursuant to article 66 or 68, whichever is applicable, where the action may be recommenced.

Article 72. Agreement after a dispute has arisen and jurisdiction when the defendant has entered an appearance

1. After a dispute has arisen, the parties to the dispute may agree to resolve it in any competent court.

2. A competent court before which a defendant appears, without contesting jurisdiction in accordance with the rules of that court, has jurisdiction.

Article 73. Recognition and enforcement

1. A decision made in one Contracting State by a court having jurisdiction under this Convention shall be recognized and enforced in another Contracting State in accordance with the law of such latter Contracting State when both States have made a declaration in accordance with article 74.

2. A court may refuse recognition and enforcement based on the grounds for the refusal of recognition and enforcement available pursuant to its law.

3. This chapter shall not affect the application of the rules of a regional economic integration organization that is a party to this Convention, as concerns the recognition or enforcement of judgements as between member States of the regional economic integration organization, whether adopted before or after this Convention.

Article 74. Application of chapter 14

The provisions of this chapter shall bind only Contracting States that declare in accordance with article 91 that they will be bound by them.

Chapter 15. Arbitration

Article 75. Arbitration agreements

1. Subject to this chapter, parties may agree that any dispute that may arise relating to the carriage of goods under this Convention shall be referred to arbitration.

2. The arbitration proceedings shall, at the option of the person asserting a claim against the carrier, take place at:

(*a*) Any place designated for that purpose in the arbitration agreement; or

(*b*) Any other place situated in a State where any of the following places is located:

(i) The domicile of the carrier;

(ii) The place of receipt agreed in the contract of carriage;

(iii) The place of delivery agreed in the contract of carriage; or

(iv) The port where the goods are initially loaded on a ship or the port where the goods are finally discharged from a ship.

3. The designation of the place of arbitration in the agreement is binding for disputes between the parties to the agreement if the agreement is contained in a volume contract that clearly states the names and addresses of the parties and either:

(*a*) Is individually negotiated; or

(*b*) Contains a prominent statement that there is an arbitration agreement and specifies the sections of the volume contract containing the arbitration agreement.

4. When an arbitration agreement has been concluded in accordance with paragraph 3 of this article, a person that is not a party to the volume contract is bound by the designation of the place of arbitration in that agreement only if:

(*a*) The place of arbitration designated in the agreement is situated in one of the places referred to in subparagraph 2 (b) of this article;

(*b*) The agreement is contained in the transport document electronic transport record; or

(*c*) The person to be bound is given timely and adequate notice of the place of arbitration; and

(*d*) Applicable law permits that person to be bound by the arbitration agreement.

5. The provisions of paragraphs 1, 2, 3 and 4 of this article are deemed to be part of every arbitration clause or agreement, and any term of such clause or agreement to the extent that it is inconsistent therewith is void.

Article 76. Arbitration agreement in non-liner transportation

1. Nothing in this Convention affects the enforceability of an arbitration agreement in a contract of carriage in non-liner transportation to which this Convention or the provisions of this Convention apply by reason of:

(*a*) The application of article 7; or

(*b*) The parties' voluntary incorporation of this Convention in a contract of carriage that would not otherwise be subject to this Convention.

2. Notwithstanding paragraph 1 of this article, an arbitration agreement in a transport document or electronic transport record to which this Convention applies by reason of the application of article 7 is subject to this chapter unless such a transport document or electronic transport record:

(*a*) Identifies the parties to and the date of the charter party or other contract excluded from the application of this Convention by reason of the application of article 6; and

(*b*) Incorporates by specific reference the clause in the charter party or other contract that contains the terms of the arbitration agreement.

Article 77. Agreement to arbitrate after a dispute has arisen

Notwithstanding the provisions of this chapter and chapter 14, after a dispute has arisen the parties to the dispute may agree to resolve it by arbitration in any place.

Article 78. Application of chapter 15

The provisions of this chapter shall bind only Contracting States that declare in accordance with article 91 that they will be bound by them.

Chapter 16. Validity of contractual terms

Article 79. General provisions

1. Unless otherwise provided in this Convention, any term in a contract of carriage is void to the extent that it:

(*a*) Directly or indirectly excludes or limits the obligations of the carrier or a maritime performing party under this Convention;

(*b*) Directly or indirectly excludes or limits the liability of the carrier or a maritime performing party for breach of an obligation under this Convention; or

(*c*) Assigns a benefit of insurance of the goods in favour of the carrier or a person referred to in article 18.

2. Unless otherwise provided in this Convention, any term in a contract of carriage is void to the extent that it:

(*a*) Directly or indirectly excludes, limits or increases the obligations under this Convention of the shipper, consignee, controlling party, holder or documentary shipper; or

(*b*) Directly or indirectly excludes, limits or increases the liability of the shipper, consignee, controlling party, holder or documentary shipper for breach of any of its obligations under this Convention.

Article 80. Special rules for volume contracts

1. Notwithstanding article 79, as between the carrier and the shipper, a volume contract to which this Convention applies may provide for greater or lesser rights, obligations and liabilities than those imposed by this Convention.

2. A derogation pursuant to paragraph 1 of this article is binding only when:

(*a*) The volume contract contains a prominent statement that it derogates from this Convention;

(*b*) The volume contract is (i) individually negotiated or (ii) prominently specifies the sections of the volume contract containing the derogations;

(*c*) The shipper is given an opportunity and notice of the opportunity to conclude a contract of carriage on terms and conditions that comply with this Convention without any derogation under this article; and

(*d*) The derogation is neither (i) incorporated by reference from another document nor (ii) included in a contract of adhesion that is not subject to negotiation.

3. A carrier's public schedule of prices and services, transport document, electronic transport record or similar document is not a volume contract pursuant to paragraph 1 of this article, but a volume contract may incorporate such documents by reference as terms of the contract.

4. Paragraph 1 of this article does not apply to rights and obligations provided in articles 14, subparagraphs (a) and (b), 29 and 32 or to liability arising from the breach thereof, nor does it apply to any liability arising from an act or omission referred to in article 61.

5. The terms of the volume contract that derogate from this Convention, if the volume contract satisfies the requirements of paragraph 2 of this article, apply between the carrier and any person other than the shipper provided that:

(*a*) Such person received information that prominently states that the volume contract derogates from this Convention and gave its express consent to be bound by such derogations; and

(*b*) Such consent is not solely set forth in a carrier's public schedule of prices and services, transport document or electronic transport record.

6. The party claiming the benefit of the derogation bears the burden of proof that the conditions for derogation have been fulfilled.

Article 81. Special rules for live animals and certain other goods

Notwithstanding article 79 and without prejudice to article 80, the contract of carriage may exclude or limit the obligations or the liability of both the carrier and a maritime performing party if:

(*a*) The goods are live animals, but any such exclusion or limitation will not be effective if the claimant proves that the loss of or damage to the goods, or delay in delivery, resulted from an act or omission of the carrier or of a person referred to in article 18, done with the intent to cause such loss of or damage to the goods or such loss due to delay or

done recklessly and with knowledge that such loss or damage or such loss due to delay would probably result; or

(*b*) The character or condition of the goods or the circumstances and terms and conditions under which the carriage is to be performed are such as reasonably to justify a special agreement, provided that such contract of carriage is not related to ordinary commercial shipments made in the ordinary course of trade and that no negotiable transport document or negotiable electronic transport record is issued for the carriage of the goods.

Chapter 17. Matters not governed by this Convention

Article 82. International conventions governing the carriage of goods by other modes of transport

Nothing in this Convention affects the application of any of the following international conventions in force at the time this Convention enters into force, including any future amendment to such conventions, that regulate the liability of the carrier for loss of or damage to the goods:

(*a*) Any convention governing the carriage of goods by air to the extent that such convention according to its provisions applies to any part of the contract of carriage;

(*b*) Any convention governing the carriage of goods by road to the extent that such convention according to its provisions applies to the carriage of goods that remain loaded on a road cargo vehicle carried on board a ship;

(*c*) Any convention governing the carriage of goods by rail to the extent that such convention according to its provisions applies to carriage of goods by sea as a supplement to the carriage by rail; or

(*d*) Any convention governing the carriage of goods by inland waterways to the extent that such convention according to its provisions applies to a carriage of goods without trans-shipment both by inland waterways and sea.

Article 83. Global limitation of liability

Nothing in this Convention affects the application of any international convention or national law regulating the global limitation of liability of vessel owners.

Article 84. General average

Nothing in this Convention affects the application of terms in the contract of carriage or provisions of national law regarding the adjustment of general average.

Article 85. Passengers and luggage

This Convention does not apply to a contract of carriage for passengers and their luggage.

Article 86. Damage caused by nuclear incident

No liability arises under this Convention for damage caused by a nuclear incident if the operator of a nuclear installation is liable for such damage:

(*a*) Under the Paris Convention on Third Party Liability in the Field of Nuclear Energy of 29 July 1960 as amended by the Additional Protocol of 28 January 1964 and by the Protocols of 16 November 1982 and 12 February 2004, the Vienna Convention on Civil Liability for Nuclear Damage of 21 May 1963 as amended by the Joint Protocol Relating to the Application of the Vienna Convention and the Paris Convention of 21 September 1988 and as amended by the Protocol to Amend the 1963 Vienna Convention on Civil Liability for Nuclear Damage of 12 September 1997, or the Convention on Supplementary Compensation for Nuclear Damage of 12 September 1997, including any amendment to these conventions and any future convention in respect of the liability of the operator of a nuclear installation for damage caused by a nuclear incident; or

(*b*) Under national law applicable to the liability for such damage, provided that such law is in all respects as favourable to persons that may suffer damage as either the Paris or Vienna Conventions or the Convention on Supplementary Compensation for Nuclear Damage.

Chapter 18. final clauses

Article 87. Depositary

The Secretary-General of the United Nations is hereby designated as the depositary of this Convention.

Article 88. Signature, ratification, acceptance, approval or accession

1. This Convention is open for signature by all States at Rotterdam, the Netherlands, on 23 September 2009, and thereafter at the Headquarters of the United Nations in New York.

2. This Convention is subject to ratification, acceptance or approval by the signatory States.

3. This Convention is open for accession by all States that are not signatory States as from the date it is open for signature.

4. Instruments of ratification, acceptance, approval and accession are to be deposited with the Secretary-General of the United Nations.

Article 89. Denunciation of other conventions

1. A State that ratifies, accepts, approves or accedes to this Convention and is a party to the International Convention for the Unification of certain Rules of Law relating to Bills of Lading signed at Brussels on 25 August 1924, to the Protocol to amend the International Convention for the Unification of certain Rules of Law relating to Bills of Lading, signed at Brussels on 23 February 1968, or to the Protocol to amend the International Convention for the Unification of certain Rules of Law relating to Bills of Lading as Modified by the Amending Protocol of 23 February 1968, signed at Brussels on 21 December 1979, shall at the same time denounce that Convention and the protocol or protocols thereto to which it is a party by notifying the Government of Belgium to that effect, with a declaration that the denunciation is to take effect as from the date when this Convention enters into force in respect of that State.

2. A State that ratifies, accepts, approves or accedes to this Convention and is a party to the United Nations Convention on the Carriage of Goods by Sea concluded at Hamburg on 31 March 1978 shall at the same time denounce that Convention by notifying the Secretary-General of the United Nations to that effect, with a declaration that the denunciation is to take effect as from the date when this Convention enters into force in respect of that State.

3. For the purposes of this article, ratifications, acceptances, approvals and accessions in respect of this Convention by States parties to the instruments listed in paragraphs 1 and 2 of this article that are notified to the depositary after this Convention has entered into force are not effective until such denunciations as may be required on the part of those States in respect of these instruments have become effective. The depositary of this Convention shall consult with the Government of Belgium, as the depositary of the instruments referred to in paragraph 1 of this article, so as to ensure necessary coordination in this respect.

Article 90. Reservations

No reservation is permitted to this Convention.

Article 91. Procedure and effect of declarations

1. The declarations permitted by articles 74 and 78 may be made at any time. The initial declarations permitted by article 92, paragraph 1, and article 93, paragraph 2, shall be made at the time of signature, ratification, acceptance, approval or accession. No other declaration is permitted under this Convention.

2. Declarations made at the time of signature are subject to confirmation upon ratification, acceptance or approval.

3. Declarations and their confirmations are to be in writing and to be formally notified to the depositary.

4. A declaration takes effect simultaneously with the entry into force of this Convention in respect of the State concerned. However, a declaration of which the depositary receives formal notification after such entry into force takes effect on the first day of the month following the expiration of six months after the date of its receipt by the depositary.

5. Any State that makes a declaration under this Convention may withdraw it at any time by a formal notification in writing addressed to the depositary. The withdrawal of a declaration, or its modification where permitted by this Convention, takes effect on the first day of the month following the expiration of six months after the date of the receipt of the notification by the depositary.

Article 92. Effect in domestic territorial units

1. If a Contracting State has two or more territorial units in which different systems of law are applicable in relation to the matters dealt with in this Convention, it may, at the time of signature, ratification, acceptance, approval or accession, declare that this Convention is to extend to all its territorial units or only to one or more of them, and may amend its declaration by submitting another declaration at any time.

2. These declarations are to be notified to the depositary and are to state expressly the territorial units to which the Convention extends.

3. When a Contracting State has declared pursuant to this article that this Convention extends to one or more but not all of its territorial units, a place located in a territorial unit to which this Convention does not extend is not considered to be in a Contracting State for the purposes of this Convention.

4. If a Contracting State makes no declaration pursuant to paragraph 1 of this article, the Convention is to extend to all territorial units of that State.

Article 93. Participation by regional economic integration organizations

1. A regional economic integration organization that is constituted by sovereign States and has competence over certain matters governed by this Convention may similarly sign, ratify, accept, approve or accede to this Convention. The regional economic integration organization shall in that case have the rights and obligations of a Contracting State, to the extent that that organization has competence over matters governed by this Convention. When the number of Contracting States is relevant in this Convention, the regional economic integration organization does not count as a Contracting State in addition to its member States which are Contracting States.

2. The regional economic integration organization shall, at the time of signature, ratification, acceptance, approval or accession, make a declaration to the depositary specifying the matters governed by this Convention in respect of which competence has been transferred to that organization by its member States. The regional economic integration organization shall promptly notify the depositary of any changes to the distribution of competence, including new transfers of competence, specified in the declaration pursuant to this paragraph.

3. Any reference to a "Contracting State" or "Contracting States" in this Convention applies equally to a regional economic integration organization when the context so requires.

Article 94. Entry into force

1. This Convention enters into force on the first day of the month following the expiration of one year after the date of deposit of the twentieth instrument of ratification, acceptance, approval or accession.

2. For each State that becomes a Contracting State to this Convention after the date of the deposit of the twentieth instrument of ratification, acceptance, approval or accession, this Convention enters into force on the first day of the month following the expiration of one year after the deposit of the appropriate instrument on behalf of that State.

3. Each Contracting State shall apply this Convention to contracts of carriage concluded on or after the date of the entry into force of this Convention in respect of that State.

Article 95. Revision and amendment

1. At the request of not less than one third of the Contracting States to this Convention, the Secretary-General of the United Nations shall convene a conference of the Contracting States for revising or amending it.

2. Any instrument of ratification, acceptance, approval or accession deposited after the entry into force of an amendment to this Convention is deemed to apply to the Convention as amended.

Article 96. Denunciation of this Convention

1. A Contracting State may denounce this Convention at any time by means of a notification in writing addressed to the depositary.

2. The denunciation takes effect on the first day of the month following the expiration of one year after the notification is received by the depositary. If a longer period is specified in the notification, the denunciation takes effect upon the expiration of such longer period after the notification is received by the depositary.

Done at New York, this eleventh day of December two thousand and eight, in a single original, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic.

In witness whereof the undersigned plenipotentiaries, being duly authorized by their respective Governments, have signed this Convention.

B. Treaties concerning international law concluded under the auspices of intergovernmental organizations related to the United Nations

[No treaties concerning international law were concluded under the auspices of intergovernmental organizations related to the United Nations in 2008.]

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. 1382 (9 May 2008): Applicant* v. *The Secretary-General of the United Nations*[3]

Receivability of appeal—Abolition of post—Expiration of contract—Agreement to not contest abolition of post—Claim for termination indemnity—Distinction to be made between substance of agreement and its application

The Applicant joined the United Nations Environmental Programme (UNEP) on a series of short-term contracts in August 1981. From 1982 she was employed on a series of fixed-term appointments for a period of approximately 20 years. On 16 November 2001, the Applicant was informed that, as a result of a general restructuring of the office, her post would be abolished on 31 December 2001. On an exceptional basis, however, her contract was extended for five months on the condition that she signed an agreement stating that

[1] In view of the large number of judgements which were rendered in 2008 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. 1372 to 1433 of the United Nations Administrative Tribunal, Judgments Nos. 2667 to 2765 of the Administrative Tribunal of the International Labour Organization, Decisions Nos. 378 to 388 of the World Bank Administrative Tribunal, and Judgment No. 2008–1 of the International Monetary Fund Administrative Tribunal, see, respectively, documents AT/DEC/1372 to AT/DEC/1433; *Judgements of the Administrative Tribunal of the International Labour Organization: 104th and 105th Sessions; World Bank Administrative Tribunal Reports, 2008;* and *International Monetary Fund Administrative Tribunal Reports, Judgement No. 2008–1.*

[2] The Administrative Tribunal of the United Nations is competent to hear and pass judgment upon applications alleging non-observance of contracts of employment of staff members of the United Nations Secretariat or of their terms of appointment. In addition, the Tribunal's competence extends to the United Nations Joint Staff Pension Fund (including cases from all specialized agencies that participate in the Fund and which have accepted the jurisdiction of the Tribunal in Pension Fund cases), the United Nations Programmes and Funds, such specialized agencies and related organizations that have accepted the competence of the Tribunal (the International Maritime Organization and the International Civil Aviation Organization), the staff of the Registries of the International Court of Justice and the International Tribunal for the Law of the Sea, and the staff of the International Seabed Authority. For more information about the United Nations Administrative Tribunal and the full texts of its judgements, see http://untreaty.un.org/UNAT/main_page.htm.

[3] Spyridon Flogaitis, President; Jacqueline R. Scott, Vice-President; and Brigitte Stern, Member.

she would not appeal against the decision to abolish her post. On 13 December 2001, the Applicant signed the official letter notifying her of the abolition of her post and stipulating that she would not appeal against that decision.

On 6 May 2002, the Applicant addressed a letter to Human Resources Management Service (HRMS), requesting a termination indemnity, to which she believed she was entitled under relevant staff regulations and rules. On 13 May 2002, the Applicant received an e-mail from HRMS, stating that she was not entitled to the payment of a termination indemnity because UNEP had not terminated her contract before it was due to expire. Subsequently in June, the Applicant requested a review of the decision of 13 May. While she received a confirmation that her letter had been received on 2 July 2002, the Secretary-General did not respond to her within the two-month limit. The Applicant consequently submitted an appeal to the Joint Appeals Board (JAB) on 25 September 2002.

The JAB adopted its report on 5 April 2005, in which it rejected the appeal as non-receivable. The JAB first found that the decision of which the Applicant was requesting review was the decision of 16 November 2001, notifying her of the abolition of her post, and that the appeal thus was time-barred. Furthermore, since the Applicant had signed the agreement waiving her right to contest the abolition of the post, her appeal was non-receivable *ratione materiae*.

In a letter dated 15 July 2005, the Secretary-General informed the Applicant that he had accepted the findings set out in the JAB's report and that he had decided to take no further action on her appeal. On 28 December 2005, the Applicant filed an appeal with the Tribunal.

The Tribunal assessed the report of the JAB and concluded that the it had been mistaken in its failure to distinguish between the two decisions at hand, namely the first decision of 16 November 2001, announcing the abolition of the Applicant's post, and the second decision of 13 May 2002, stipulating that the Applicant was not entitled to a termination indemnity. This mistake had impacted upon both grounds of non-receivability. The Tribunal stated that, as it was in fact the decision of 13 May 2002 which the Applicant had appealed, her appeal had been filed within the two-month time limit.

The Tribunal further addressed the scope of the no-contest agreement. The Tribunal registered its concern about such a practice, which might, depending on the circumstances, be regarded as duress of such magnitude as to render the no-contest agreement null and void and, consequently, to preclude its consideration by the Tribunal. The Tribunal noted that such a question could be posed in the present case, although the Applicant had not contested the agreement on this point. The Tribunal continued to point out that, in any event, the agreement did not have the scope attributed to it by the JAB or the Respondent. In the view of the Tribunal, the agreement of 13 December 2001 clearly dealt only with the decision to abolish the post. The Applicant had not waived her right to appeal against the decision of 13 May 2002 denying her a termination indemnity.

The Tribunal recalled Judgment No. 955 which also involved a no-contest agreement, where the Tribunal had stated that the question of interest on the sums owed to the Applicant by the Administration concerned not the substance of the agreement but its application, which did not fall within the scope of the no-contest agreement. Similarly, in the present case, the distinction should be drawn between the substance of the agreement,

i.e., the abolition of the post, and its application, *i.e.,* the non-payment of a termination indemnity.

The Tribunal took the view that remanding the case to the JAB would serve little purpose; besides neither the Applicant nor the Respondent had requested it to do so. Thus, the Tribunal proceeded to order the parties to submit their arguments on the merits of the case by 1 June 2008 at the latest.

2. *Judgement No. 1387 (8 October 2008): Applicant* v. *The Secretary-General of the United Nations*[4]

Classification of post—Right of applicant to be given fair and full consideration in promotion exercise—Interventions by persons having a right which might be affected by the judgement to be given by the Tribunal—Broad discretion enjoyed by the Secretary-General in personnel matters—Organization should not conceal from staff members pertinent information concerning their future nor behave in such a manner as to render staff members entirely demoralised and disillusioned—Cumulative effect of the facts of the case reveal a lack of transparency which had demoralized the Applicant in a way amounting to harassment

The Applicant entered the service of United Nations Population Fund (UNFPA) in January 1987 as a Junior Professional Officer at the L-2 level. At the time of the events which gave rise to his application, he held a permanent appointment at the P-4 level. In January 1998, the Applicant was reassigned to an unclassified post while keeping his personal level of P-4. The post was classified in June 2000 at the P-5 level. The Applicant was not formally notified of the decision in 2000, but learned of it in April 2001.

The Applicant initiated in 1999 and 2002 recourse proceedings as he had not been considered for promotion in two promotion exercises. With regard to the first promotion exercise, the Appointment and Promotion Board (APB) found on 13 October 1999 that it could not recommend a promotion as, at the time of the promotion exercise, there had not been a P-5 position available. With regard to the second promotion exercise, the Applicant was informed on 12 September 2002 that he had been unsuccessful for performance reasons.

In January 2003, the Applicant was assigned to a non-core position as a Finance Specialist, which had been classified at the L-4 level; and he would hold a general lien against a P-4 post. This reassignment was confirmed on 5 March 2003, and on 30 April he requested administrative review of this decision. The Applicant lodged an appeal with the Joint Appeals Board (JAB) on 30 June 2003, and the JAB delivered its report on 6 January 2005. While the JAB concluded that the Applicant had in fact received full and fair consideration in the two promotion exercises and that he had failed to prove that he had been the victim of prejudice and discrimination, it found that UNFPA had violated his rights in failing to inform him of the classification of the post to the P-5 level.

On 25 May 2005, the Applicant was informed that the Secretary-General had decided to accept the JAB's recommendation. On the same day, he lodged the present application before the Tribunal.

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[4] Spyridon Flogaitis, President; and Brigitte Stern and Goh Joon Seng, Members.

The Tribunal first addressed the receivability of the number applications for intervention which it had received. As none of the applicants appeared to have a right which might be affected by the judgement to be given by the Tribunal, the applications were dismissed. Nevertheless, the Tribunal called them as witnesses in the oral hearings since they might be in a position to provide valuable evidence in the Applicant's case.

As to the substance of the case, the Tribunal recalled its consistent jurisprudence recognizing the broad discretion enjoyed by the Secretary-General in matters of personnel. It noted, however, that this discretion was not unfettered, and that the Tribunal had clearly determined the control standards it exercised in promotion cases. It recalled Judgment Nos. 362 (1986), 828 (1997) and 1231 (2005) in which it had stated that "it is indispensable that 'full and fair consideration' should be given to all applicants for a post," and that "the Administration must be able to make at least a minimal showing that the staff member's statutory right was honoured in good faith in that the Administration gave its 'fullest consideration' to it [the application]." In Judgment No. 834 (1997) it held that 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*" (emphasis added).

The Tribunal noted that the Applicant claimed that his non-promotion to the P-5 level was the result of prejudice and discrimination; and, in more general terms, he and the interveners allege a reigning atmosphere of prejudice at UNFPA. The Tribunal recalled that the Applicant was a staff member holding a permanent appointment, who considered himself worthy of a P-5 position, and who wished for such a promotion. As to the first promotion exercise, the Tribunal found the justification given for non-promotion, namely that at the time no post existed at P-5 level, to be entirely reasonable. However, the Tribunal was not persuaded by the newly-founded concerns regarding the Applicant's performance, which were given as reasons following the second promotion exercise. It was not clear to the Tribunal what performance issues—if any—had arisen between the two promotion exercises, and the Tribunal found that no adequate explanation had been provided on this matter.

The Tribunal further underlined that it is in the interest of the Administration to treat staff members with the respect they deserve, as they are the ones who give their competencies and lives to enable the Organization to achieve its goals. The Administration should neither conceal from staff members pertinent information concerning their future nor behave in such a manner as to render staff members entirely demoralised and disillusioned with the Organization. The Tribunal expressed its deep concern at the number of long-serving staff members whose testimony in this case had indicated a lack of confidence in their employer.

The Tribunal recalled its Judgement No. 1290 (2006) in which it had decided that "[t] he cumulative effect of the facts in the case, reveal a lack of transparency in the way the Administration dealt with the Applicant and clearly destabilized him in a way which the Tribunal views as harassment justifying compensation." It found that the Applicant had suffered the same fate in the present case, and awarded him compensation in the amount of three months' net base salary.

3. *Judgement No. 1388 (8 October 2008): Applicant* v. *The Secretary-General of the United Nations*[5]

Compensation to beneficiaries following the death of a staff member—Compensation under appendix D of the Staff Rules and under the Malicious Act Insurance Policy (MAIP)—Duty of good faith owed by the organization—Duty to conduct an adequate investigation of the death of a staff member—Duty to pursue Applicant's claim under MAIP fairly, effectively and efficiently in her best interest—Compensation under appendix D of the Staff Rules clearly not "reasonable compensation" as required by staff regulation 6.2

The Applicant was the spouse of Dr. C, a staff member of the United Nations Development Programme (UNDP) who died in 2000 on an official mission to Kisangani in the Democratic Republic of the Congo. On 18 August 2000, Dr. C was found hanged in his hotel room. Following his death, the United Nations Mission in the Democratic Republic of the Congo (MONUC) and the United Nations Security Coordinator (UNSECOORD) conducted investigations regarding his death. These investigations did not, however, lead to a clear conclusion. Upon the Applicant's request for compensation under appendix D to the staff rules, the Advisory Board on Compensation Claims (ABCC) recommended to the Secretary-General that the death be recognized as attributable to the performance of official duties, and that the Applicant be compensated accordingly. On 3 January 2002, the Secretary-General decided to follow the ABCC recommendation, and awarded the Applicant compensation.

The Applicant subsequently requested that a claim be submitted for compensation under the Malicious Act Insurance Policy (MAIP), which was administered by UNSECOORD and reviewed and determined by the insurance carrier. The Applicant also requested to receive copies of the documents submitted by UNSECOORD to the insurer and the broker. This request was rejected by UNDP, as staff members were not parties to the policy. On 2 December 2002, the Applicant was informed by UNDP that the underwriters of the MAIP had concluded that there had been no evidence that Dr. C. had died as a result of an insured contingency covered in the policy, and that UNDP therefore had decided not to make a payment under the MAIP. On 4 February 2003, UNDP informed the Applicant's lawyer of the decision to consider the case closed unless further evidence was provided which could establish that Dr. C. died under circumstances covered by MAIP.

The Applicant requested administrative review of this decision and, on 6 June 2003, lodged an appeal with the Joint Appeals Board (JAB). In its report, the JAB found that UNSECOORD had acted in compliance with relevant laws and concluded that the Applicant had no grounds for contesting the decision. However, the JAB urged the Secretary-General to take necessary actions to update the obsolete calculation methods for compensation and to increase the monthly amount awarded to the Applicant to a more appropriate level. Nevertheless, the Secretary-General rejected this recommendation on the grounds that there was no legal basis for it. The Applicant subsequently filed the application with the Tribunal.

The Tribunal noted that the current dispute had arisen because of the uncertainty as to how and by whose hand Dr. C had died, and that unfortunately this central issue was highly

[5] Spyridon Flogaitis, President; Dayendra Sena Wijewardane, Vice-President; and Sir Bob Hepple, Member.

unlikely to be solved after some eight years. The Tribunal observed that its Statute did not envisage the possibility of the Tribunal's conducting fact findings. It thus took as the starting point the Secretary-General's acceptance of the ABCC recommendation according to which, while it was not be possible to conclude whether Dr. C had died from suicide or homicide, his death should be recognized as attributable to the performance of official duties.

The Tribunal observed that a claim could only be made where there had been a breach of an express or implied contractual duty owed to Dr. C or to those whom he had named as beneficiaries under the MAIP. Thus, the fact that the Applicant was herself a United Nations Volunteer staff did not grant her a cause of action under MAIP; however, she did have rights as a beneficiary under her husband's terms of appointment.

The Tribunal noted that the relevant contractual duty of the Organization, as the assured and the administrator of claims made by staff members who are Insured Persons and their beneficiaries, may be variously described as a duty to act fairly and in good faith, as a duty not to undermine trust and confidence as between the Organization and its staff members and their beneficiaries, or as a duty of mutual co-operation to achieve the objectives of the contract. In the context of this case, the specific duties of the Organization were, first, to conduct an adequate investigation of the death or verify that one had been conducted; and second, to pursue the Applicant's claim under MAIP fairly, effectively and efficiently in her best interests.

First, UNSECOORD failed to discharge its responsibility under the guidelines on "Actions required in case of death of staff members under suspicious or unclear circumstances," issued in 1994. According to the facts, there had been no real criminal investigation in Kisangani immediately following the death of Dr. C, as serious problems existed with regard to matters such as securing the crime scene, local police involvement, treatment of witnesses, evidence, etc. Such circumstances made it incumbent on UNSECOORD to conduct a thorough investigation of its own and to be cautious about its findings in view of the absence of a proper investigation by local police and MONUC. UNSECOORD report was seriously defective in a number of important respects, including undue weight attached to Dr. C's state of depression, the absence of adequate explanations for rejecting the autopsy report which had concluded that the injuries suggested a homicide, the lack of reference to evidence which might point to assault, etc. As a whole, the investigation report was superficial and made no reference to difficulties with the local police or MONUC inquiries, which rendered its definite and unqualified conclusion that Dr. C. had committed suicide far too strong.

Second, the submission of the claim under MAIP seriously failed to present a fair and impartial description of the circumstances, as it had highlighted the weaknesses of the claim. The Tribunal considered that the claim must have been prejudiced by the construction which favoured the suicide theory, the inaccurate account of the ABCC balanced reasoning, the disorder of the documentation, and an inter-office memorandum which had suggested the insurer to reject the claim if they saw fit. The Tribunal also pointed out failures of due process by the Organization. Provided in the standard UNSECOORD procedure, a committee should have been convened to review the claim under the MAIP before it went to the underwriters: there was no evidence that such a meeting had taken place, which constituted a serious irregularity. A further failure of due process had been the lack of transparency by the Organization in its dealings with the Applicant. The duty

of good faith required UNSECOORD to share all the facts relevant to the claim with the Applicant, not only because of the contractual duty, but also in light of the Applicant's moral interest in knowing the full circumstances of her husband's death.

Accordingly, the Tribunal found that the Applicant had established that the MAIP claim had been seriously mishandled by the Organization, for which the she was entitled to compensation. The Tribunal considered that, had the claim been properly handled, it was not unlikely that the insurer would have felt obliged to negotiate a settlement of the claim in order to avoid litigation. In light of all the circumstances, the Tribunal assessed the compensation due to the Applicant at USD 250,000, which exceeded the compensation cap but was justified by the reckless and callous treatment by the Organization.

As to the level of compensation granted the Applicant under appendix D, the Tribunal was convinced by the fact that this appendix no longer provided a scheme for "reasonable compensation" concerning the death of a staff member, as required by staff regulation 6.2. The Tribunal noted that the fact that a negative entitlement was reached after the pension deduction indicated that the cap was outdated, as the pension benefit had been updated while the appendix D caps had not.

With regard to *ex gratia* payments, the Tribunal agreed that it was not an appropriate method for offsetting inadequacies in entitlements under appendix D; rather, it was intended to cover only the situation where a person was ineligible to claim benefits under appendix D. The Tribunal stated that it had no power to invalidate or amend the specific caps in appendix D; however, it strongly urged the Secretary-General to review and revise them.

Finally, the Tribunal addressed the Applicant's claims for compensation for the alleged failure to safeguard Dr. C's personal safety and to take good care of his health and welfare. The Tribunal found that these claims were irreceivable, as the Applicant had never requested administrative review of that question, and as it was not sufficiently linked to the contested administrative decision of UNDP.

The Tribunal finally addressed two ancillary matters. First, the Tribunal could not accept, and would not abide by, the condition imposed by the Respondent that the documents submitted be reviewed in confidentiality. Second, the Tribunal rejected the Applicant's application for costs, as it was not satisfied that the Applicant had been obliged to incur unreasonable costs in the present case.

4. *Judgement No. 1389 (8 October 2008): Applicant* v. *The Secretary-General of the United Nations*[6]

Implementation of the decision to abolish post—Abolition of post coinciding with expiration of contract—Claim for amount equivalent to termination indemnity—Right to three months notice—Agreement to not contest separation from service—Obligation of good faith owed by international organizations—Principle of equality of treatment due to all staff members

The Applicant was a former staff member of the Untied Nations Environment Programme (UNEP). On 2 May 2008, the Tribunal rendered Judgement No. 1382,[7] in which

[6] Jacqueline R. Scott, Vice-President; Brigitte Stern and Augustín Gordillo, Members.

[7] See section 1 of this chapter.

the receivability of the application was addressed. Pursuant to the Tribunal's order, both parties submitted their arguments on the merits of the case.

In its former Judgement No. 1382, the Tribunal had noted that the Applicant had clearly stated that she was not contesting the abolition of her post but was alleging a violation of her rights. The Tribunal found it appropriate to emphasize that what the Applicant wanted was to not be separated from the United Nations after twenty years of service without some financial compensation. In this regard, the Applicant was not claiming a termination indemnity *stricto sensu* but an amount equivalent to termination indemnity of twelve months' net-base salary. The Tribunal stated that it would consider the application in its entirety, but would rule only on the alleged violations connected with the circumstances surrounding the implementation of the abolition decision that might affect the Applicant's entitlement to financial compensation at the time of her separation.

The Tribunal first considered the way in which the Applicant had been treated by the Administration at the time of her separation from service. It was well-established in the Tribunal's case-law that the normal expiration of a fixed-term contract which occurred independently of the abolition of a post did not give rise to termination indemnity. Further, staff rule 109.7 clearly provided that a temporary appointment for a fixed term should expire automatically and without prior notice on the expiration date, and separation as a result of such expiration should not be regarded as a termination within the meaning of the Staff Regulations and Rules. The applicability of this rule was not contested. Thus, as the Applicant's contract was allowed to run until the end of its term, the Tribunal agreed with the Respondent's claim that the Applicant was not entitled to a termination indemnity according to the Staff Regulations and Rules.

Nevertheless, the Tribunal emphasized the unfairness of situations such as that of the Applicant, in which a staff member who had served the Administration for many years received no compensation at the end of his or her service. The Tribunal noted that the strict enforcement of staff rule 109.7 might, in some cases, produce unfair consequences as regards the practice of using continuous, sequential fixed-term contracts throughout a career. However, the Tribunal recalled that it was neither a political organ that could take staff-management decisions, nor an adjudicating organ with the power to redress unsatisfactory situations on the basis of a sense of equity. The above opinions were expressed in respect of very specific situations and in no way called into question the use of fixed-term appointments in general. In this case, the Tribunal could therefore only apply the rule, however unsatisfactory it might turn out to be in certain situations.

The Tribunal subsequently moved on to determine whether the implementation of the decision to abolish the Applicant's post was carried out in such a way as to constitute a violation of the Applicant's rights.

The Tribunal noted that making the date of abolition of the post, which conferred entitlement to an indemnity if it interrupted a contract, coincide with the expiration of the Applicant's fixed-term appointment, which did not confer entitlement to an indemnity, created at least the appearance of a lack of good faith and also made it all the more difficult to determine the Applicant's rights. The Administration had thus precluded the Applicant from the possibility of obtaining a termination indemnity, by characterizing her situation as the normal expiration of a fixed-term contract.

The Tribunal recalled that the Administration was bound by certain fundamental obligations towards all staff members, whether or not they had a permanent appointment. It was thus beyond question that the Administration must observe the principle of good faith in managing its staff, and the principle was particularly important upon the abolition of a post.

The Tribunal noted the Administration's total disregard of its obligations under staff rule 109.1 (c) (i), which required it to make efforts to place the staff member concerned on a new post when a post was abolished, provided that there were posts available that matched his or her profile. The Tribunal recalled that, when it was questionable whether a staff member had been given every reasonable consideration, the burden of proof of having done so was on the Administration. Yet, it appeared that the Administration had made absolutely no attempt to place the Applicant on another post.

The Tribunal observed that, as the UNEP Administration regarded the Applicant's situation as the expiration of her fixed-term contract as far as the financial consequences were concerned, UNEP should have followed the procedural rules provided for in its memorandum of 31 May 1999. By its own initiative, UNEP issued the memorandum extending the practice of providing three months notice upon expiration of a contract to that of a fixed-term contract. By not applying that rule to this case, UNEP did not observe the principle of equality of treatment due to all staff members.

With regard to the argument put forth by the Respondent that the Applicant could not benefit from the aforementioned practice because, under her no-contest agreement, she had been given six months' notice and a five-month contract extension, the Tribunal stated that the extension could not, in any way, be considered as constituting three months notice. The Tribunal rejected the reasoning of the Respondent as the additional months were solely in return for the waiver of the Applicant's right to contest the abolition of her post. The Tribunal therefore concluded that the Administration had violated the Applicant's right to benefit from the 1999 memorandum on which staff members should be able to rely so as to receive three months' notice or, in the absence of such notice, suitable compensation.

In conclusion, the Tribunal declared that the decision to abolish the Applicant's post had been implemented in a way that had violated her right to fair and equitable treatment, and ordered the Respondent to pay the Applicant an amount equivalent to nine months' net-base salary.

5. *Judgement No. 1390 (8 October 2008): Applicant* v. *The Secretary-General of the United Nations*[8]

Completion of performance evaluation without participation of staff member—Right to full and fair consideration in promotion exercises—Staff member not afforded opportunity to rebut negative comments in performance evaluation—Consistent and unfailing respect of due process of law by the Administration is the first and foremost part of any successful and satisfactory system of administrative justice

The Applicant was a permanent staff member of the Untied Nations at the relevant time. On 14 November 1996, her performance was evaluated and a report was prepared

[8] Spyridon Flogaitis, President; Jacqueline R. Scott, Vice-President; and Agustín Gordillo, Member.

for the period from January 1994 to 31 March 1996. The report rated her performance for the period as "very good."

In 2000 and 2001, respectively, the Applicant applied for several P-4 posts and also sought assistance of Office of Human Resource Management in connection with a significant gap in her performance evaluation records. In 2001, the Applicant's Performance Appraisal System (PAS) report for the period from April 1996 to March 1999 was completed without her participation, and was placed in her official status file without her signature. In late 2001, the Applicant discovered the unsigned PAS report and immediately requested a suspension of action and other measures. In 2002, the Applicant received an apology from the Administration and was offered two options—either to sign the report and avail herself of the rebuttal process, or to remove the report and any reference to it without a formal rebuttal procedure. The Applicant requested the report be removed and a note to be included in her file, and lodged an appeal with the Joint Appeals Board (JAB). In 2005, the Secretary-General decided that the contested PAS report be declared null and void, be removed from the file and a note be inserted stating that the performance had been fully satisfactory. The Applicant subsequently filed an application with the Tribunal.

The Tribunal was of the view that the performance evaluation for the period in question had been prepared in flagrant violation of the rules by denying the Applicant the right to participate in the evaluation process and preventing her from rebutting the appraisal. The Tribunal considered that the Respondent had failed to fulfil its responsibility for a timely execution of the PAS. Moreover, the placement and use of the contested PAS evaluation in her official status file while was being considered for posts might well have damaged her career development. Negative comments in the report must have been taken into account when she was considered for the posts for which she had applied, thus decreasing her chances for promotion. While the Applicant might or might not be selected for promotion and the rebuttal might or might not have been successful, the Tribunal concluded that she had been deprived of her rights.

The Tribunal considered that the Respondent had not satisfied its burden of proof to show that "full and fair consideration" had been given in the promotion exercises. The Respondent could not produce any evidence that it had acted in accordance with the appropriate personnel evaluation procedures. Instead, the Respondent merely attempted to rely on the fact that the offensive document was removed, that it had apologized and that no harm had been done to her since the evaluation gave her a "fully meets expectations" overall rating. However, the Tribunal found this argument disingenuous. The Tribunal was convinced that any reasonable promotion panel would have been seriously concerned about the negative comments in the report. Further, the Applicant was not afforded any opportunity to rebut or possibly correct the negative comments, and the removal of the tainted evaluation did nothing to ameliorate the damage done to her. Thus, the Tribunal concluded that the Applicant deserved to be compensated for the violations of her due process rights.

In addition, the Tribunal noted that the whole administrative process had a diminished value when a staff member was substantially deprived of due process. The consistent and unfailing respect of due process of law by the Administration was the first and foremost part of any successful and satisfactory system of administrative justice. Thus, the

Tribunal underscored the importance of adherence by the Respondent to the PAS system and to the basic principles of due process of law in general.

The Tribunal ordered the Respondent to pay compensation in the amount of six months' net-base salary.

6. *Judgement No. 1396 (8 October 2008): Applicant* v. *The Secretary-General of the United Nations*[9]

Recognition of same-sex marriage—Application of national law in determining the personal status of staff members—The practice followed by the Organization does not result in discrimination based on nationality

The Applicant was a citizen of the United States of America and joined the Office for Coordination of Humanitarian Affairs (OCHA) in 1998. In 2000, she contracted a same-sex union with a Danish citizen, Ms. C, in Denmark. In 2001, the Applicant applied to the Administration for formal recognition of her union. Since the practice at that time within the Organization was to refer to the law of a staff member's home country in order to determine his or her marital status, the Office of Legal Affairs (OLA) consulted with the United States Government, which confirmed that under U.S. federal law, unions between persons of the same sex did not fall within the definition of "marriage" nor a partner of the same sex within the definition of "spouse." Accordingly, the Office of Human Resource Management (OHRM) rejected the Applicant's request in 2002. The Applicant sent a request to the Secretary-General for review of the administrative decision, which was later upheld by the Secretary-General.

In 2003, the Applicant appealed the decision before the Joint Appeals Board (JAB). The JAB concluded that the Administration had applied the law correctly by referring to national law. Meanwhile, Ms. C entered the United Nations service. The Applicant's status as the spouse of Ms. C was thus acknowledged, since Danish law recognized the same-sex union however, Ms. C was still not acknowledged as the spouse of the Applicant. In 2006, the Applicant filed the application to the Tribunal.

In 2007, after reviewing the Organization's practice with regard to personal relationships between staff members which were recognized by the national law of only one of the staff members, the Assistant-Secretary-General for Human Resources Management required to discontinue the situation and to recognize both staff members as "married and related." Accordingly, OHRM amended the status of the Applicant to "married and related" with retroactive effect to 1 February 2004.

The Tribunal first considered the claim that Ms. C be entitled to the Applicant's pension rights in case of her death. The Tribunal stated, first, that this claim did not fall within its jurisdiction *ratione materiae* inasmuch as it had not been submitted to the JAB; second, the request was moot at the time of the Tribunal's consideration, as the issuance of the memorandum by OHRM in 2007 had changed the Applicant's status to "married and related," thus enabling Ms. C to be entitled to the Applicant's pension rights.

In consideration of the Applicant's request for compensation, the Tribunal pointed out that the Applicant had received benefits as of the time when she requested them. Since

[9] Jacqueline R. Scott, Vice-President; Brigitte Stern and Sir Bob Hepple, Members.

these benefits could not be awarded retroactively, the Applicant had no right to compensation for any previous period.

Finally, the Tribunal turned to the Applicant's request that the Tribunal should order the United Nations to recognize same-sex partnership under a neutral set of criteria. The Tribunal emphasized that it was neither the General Assembly nor the Secretary-General, which were the only two authorities that were competent to settle personnel questions. Recalling its previous Judgements Nos. 722 (1995) and 1145 (2003), the Tribunal stated that it was a part of the justice system whose primary objective was to right employment wrongs and to provide remedies to staff members, rather than a vehicle available to staff members to lobby management for what they perceived as their improvements.

Nonetheless, the Tribunal wished to make some brief comments on this request. First, it recalled that the United Nations was not a body for determining the societal choices of the various communities existing throughout the world; rather, it was a forum of tolerance where States with conflicting conceptions regarding family relations learned to coexist.

The Tribunal recognized that the notion of "marriage" and "couple" were by definition evolutionary and noted that the United Nations was not insensitive to this evolutionary nature. While taking this evolution into account, the Tribunal stated that, in the absence of an internationally agreed or customary definition of "couple," the principle of referring to national law was the most satisfactory means of deciding and avoiding clashes between the political and cultural conceptions of different States. Further, the Tribunal noted that this principle was consistent with the decisions of the International Labour Organization Administrative Tribunal and General Comment 19 of the United Nations Human Rights Committee.

The Tribunal added that the practice followed by the Organization did not result in discrimination based on nationality. If there was any difference in treatment, it resulted from the national legislation and not from the Staff Regulations and Rules of the United Nations. Further, such practice had no effect on the conditions under which particular benefits were granted, because the rules extended substantive rights to all partners bound to a staff member by a legally recognized union, and not to partners of any particular nationality.

7. Judgement No. 1402 (8 October 2008): Applicant v. *The Secretary-General of the United Nations*[10]

ESTOPPEL WITH REGARD TO RECEIVABILITY OF THE CLAIM—LEGAL EXPECTATION OF RENEWAL OF CONTRACT—COMPENSATION IN CASES WHERE PROCEDURAL IRREGULARITIES DURING THE PERFORMANCE EVALUATION VIOLATE DUE PROCESS RIGHTS

The Applicant joined the International Civil Aviation Organization (ICAO) in 2002 on a three-year fix-term appointment. He received two performance appraisals in 2003 and 2004, both of which were rated as "Good." In the second appraisal, the regional director recommended the renewal of his appointment. However, the chief of the Regional Affairs Office expressed his concern that the "reflection of the Applicant's performance was not positive at all." In 2005, the regional director submitted a confidential report containing

[10] Jacqueline R. Scott, First Vice-President; Dayendra Sena Wijewardane, Second Vice-President; and Goh Joon Seng, Member.

negative comments on the Applicant's performance to the Secretary-General. As a result, the Secretary-General offered the Applicant an extension for a period of six months only, and advised that his contract would not be extended thereafter.

The Applicant wrote to the Secretary-General requesting to appeal against the decision to separate him from service and further requesting that an Advisory Joint Appeals Board (AJAB) be set up to review his case. The AJAB advised both the Applicant and the Secretary-General that this request was being treated as a request for review and neither party protested this decision. In its report, the AJAB found that, though it was unable to conclude that the Applicant had a legitimate expectation of renewal of his contract, there was a certain degree of arbitrariness and inconsistency on the part of the Administration. The AJAB rejected the Applicant's plea not to be separated from service but recommended that he be awarded compensation. The Secretary-General accepted the rejection but refused to pay compensation. The Applicant filed an application with the Tribunal.

Addressing the issue of receivability, the Tribunal noted that the Applicant had not requested administrative review of the decision before appealing to the AJAB. However, the AJAB accepted the receivability on the grounds that the Applicant had combined his request for administrative review into his appeal. The Tribunal observed that the Secretary-General appeared to have conceded this argument in partially accepting the findings and recommendation of the AJAB. Thus, the Tribunal considered that, by reason of its conduct, the Organization was estopped from objecting to the receivability of the application.

The Tribunal subsequently turned to the substance of the case. It noted that it was usual that an appointment did not carry with it an expectation of renewal or conversion to another type of appointment, and would generally terminate upon its expiry. Thus, the Applicant had no right to the renewal of his fixed-term appointment. However, the decision-maker must exercise its discretion on whether or not to extend the service in a transparent and unbiased manner. Referring to Judgement No. 885 (1995), the Tribunal found that, when no express promises had been made to the Applicant, it still had to review whether any abuse of discretion on the part of the Respondent could be established.

The Applicant claimed that he had a legitimate expectation that his contract be renewed for a period of two years. He relied on several factors, including ICAO general administrative practice of extending for a two-year period the fixed-term contracts when performance proved satisfactory; his encumbrance of a budgeted post; his good performance evaluations; the regional director's recommendation of extension, etc. The Tribunal found that none of the aforementioned factors would by itself give rise to a legal expectation. However, the cumulative effect of these factors was that the Applicant—who had every reason to believe his performance to be not only satisfactory but good, who was aware of his supervisor's recommendation, and who knew that his post was not subject to budgetary concerns—was entitled to rely upon the practice of the renewal and therefore had a legal expectation of renewal of his contract.

Referring to the confidential communication within the Administration, the Tribunal emphasized its disapproval of such unofficial evaluation which bypassed the formal evaluation process, preventing staff members from exercising their rights of participation and rebuttal, and resulted in a violation of due process rights. The Tribunal stated that it was apparent that the decision on the renewal of the Applicant's contract was inextricably linked to his performance evaluation. In light of the flawed process of evaluation, it could

be implied that, had a correct evaluation been made, the Applicant's contract might or would have been extended.

Finally, having concluded that the Applicant had a legal expectation of renewal of contract which had been frustrated by a lack of due process, the Tribunal held that the Respondent had improperly exercised its discretion in the decision-making process, and that the Applicant was therefore entitled to compensation. In computing the compensation due to the staff member, the Tribunal was mindful of both the violation of the staff member's rights and of the probable consequences of such a violation on his or her career. In those situations where there had been serious and manifest violations of the staff member's rights and also where the likelihood of renewal was particularly strong in the absence of such violations, the staff member was entitled either to renewal or to compensation *in lieu* thereof. In the present case, the Tribunal considered that the above principle should apply, and, as the Applicant had once been given a six-month extension, awarded the Applicant compensation in the amount of another eighteen months' net-base salary.

8. *Judgement No. 1404 (8 October 2008): Applicant* v. *The Secretary-General of the United Nations*[11]

Issuance of written reprimands is subject to the same principles of fairness and due process that apply to disciplinary measures—Allegations of sexual exploitation and abuse—Violation of basic standards of fact-finding—Failure of the Organization to observe standard of care due to staff members

The Applicant was a staff member of the United Nations and was deployed to the United Nations Organization Mission in the Democratic Republic of the Congo (MONUC) at the time of the event in question. In 2000–2001, allegations of sexual exploitation and abuse against refugee women by United Nations peacekeepers and humanitarian aid workers in West Africa surfaced. As a result, in 2003, the Secretary-General adopted "Special measures for protection from exploitation and sexual abuse" (SEA policy).

On 12–13 October 2004, at midnight, two officers of the MONUC Military Police (MPs) arrived at a roadside scene where the Applicant was attempting to break up a dispute between his two female guests, and two other women. The Applicant exchanged angry words with the MPs, apparently attempting to obtain their help in dealing with the dispute. A MONUC Security officer was called to the scene and an investigator was tasked with investigating the event. After three months, the investigator submitted her report which stated that one of the women was a known prostitute and the Applicant smelled of alcohol and acted abnormally. She concluded that he had been disrespectful to MONUC security personnel. A SEA investigation report was also submitted, which concluded that there was sufficient evidence to substantiate the allegations of the misconduct and recommended administrative and disciplinary action.

On 1 March 2005, the Applicant was formally charged with misconduct, including offering housing and other remuneration in exchange for sexual favours from two women, in violation of the SEA policy. The Applicant was subsequently suspended and the case was referred to the Joint Disciplinary Committee (JDC). However, the JDC found that the Administration had not presented a *prima facie* case and therefore recommended that no

[11] Jacqueline R. Scott, Vice-President; Sir Bob Hepple and Agustín Gordillo, Members,

disciplinary measure be taken but a written reprimand. The majority of the panel also recommended compensation of one-month net-base salary. The Secretary-General later gave the Applicant a written reprimand but rejected the recommendation for compensation. The Applicant subsequently filed the application with the Tribunal in 2006.

The Tribunal first considered whether that the Applicant's due process rights had been violated. The Tribunal stated that, although a written reprimand was not regarded as a disciplinary measure, it could have legal consequences to the detriment of the staff member, particularly when the reprimand was placed and kept on his file. Thus, the issuance of reprimands was subject to the same principles of fairness and due process that applied to disciplinary measures. In the present case, the Tribunal found that the JDC recommendation had been based on significant inconsistencies and was disproportionate to its findings of fact which, to some extent, suggested the Applicant's innocence. The JDC error had been compounded by the misinterpretation of the recommendation by the Secretary-General, whose wording wrongly implied that the Applicant was guilty. In the context of the wholly unfounded allegations made against him in the SEA report, the written reprimand could be construed by outside observers as implying that the Applicant had been engaged in wrongful conducts. Accordingly, the written reprimand must be rescinded, and all adverse material dealing with this matter should be removed from his official status file.

The Tribunal moved on to conclude that the Applicant had not been adequately compensated. In the view of the Tribunal, the JDC correctly found that the basic standards of fact-finding in the investigation had been violated, and that they were also right to be extremely critical of the decision to suspend the Applicant without pay for seven months with no justification. In such case, the Tribunal found the compensation of one-month salary decided by the majority inconsistent with the JDC own findings. A one-month salary was nowhere near far enough to recognize the serious intrusion into the Applicant's private life, the damage to his reputation and the gross violation of his rights. The Applicant appeared to have been the innocent victim of an over-zealous application of the new SEA policy, conducted in the glare of media publicity, when the Organization seemed to have been in a state of moral panic. In such circumstances, the Tribunal concluded, the Administration negligently failed to observe the standard of care due to any staff member. Therefore, the Tribunal ordered compensation in the amount of one-year net-base salary.

Finally, the Tribunal awarded a sum of USD 5,000 by way of costs, as the disciplinary charges should have never been brought against the Applicant who had reasonably incurred legal expenses.

9. *Judgement No. 1412 (8 October 2008): Applicant* v. *The Secretary-General of the United Nations*[12]

Status under special service agreement (SSA)—Request that period served under SSA be validated for pension purposes—Person appointed under SSA not a staff member under United Nations Staff Regulations—Application irreceivable *ratione materiae*

The Applicant joined the Committee on Missing Persons in Cyprus (UNFICYP) in 1985 on a six-month special service agreement (SSA), which was continuously extended

[12] Dayendra Sena Wijewardane, Vice-President; Brigitte Stern and Goh Joon Seng Members,

thereafter for periods of six months. In 1998, he received a fixed-term appointment which was continuously extended until he retired in 2006.

In 1999, the Applicant requested the United Nations Joint Staff Pension Fund (UNJSPF) that his service between 1985 and 1998 be validated for pension purposes. On 29 July 1999, UNJSPF informed the Applicant that it could not accept his application because participation in the Fund expressly excluded periods served under SSA. Subsequently, from 2000 to 2003, the Applicant communicated with several offices of the United Nations requesting retroactive affiliation to the Fund or a fair and final settlement of his personal situation for the period he had served under SSAs. On 27 October 2003, the Organization reiterated the information cited in the Fund's letter of 29 July 1999, most notably that the Applicant was on SSA contract during the contested period. As such, he was not considered a staff member of the United Nations and his participation in the UNJSPF was excluded.

In November 2003, the Applicant wrote to the Secretary-General requesting administrative review of the decision of 27 October 2003. Later, he was informed that the claims regarding the Fund were not within the purview of requests for review as the UNJSPF had its own appeal procedures, and also that the request was time-barred as he had not filed it within two months of the communication of 29 July 1999. In 2004, the Applicant lodged an appeal with the JAB. The JAB found the claim to be irreceivable as it related to the timeframe when the Applicant was not a staff member and as it was time-barred. In 2006, the Applicant filed the application with the Tribunal, challenging the Secretary-General's decision by which he had accepted the JAB findings and conclusions.

The Tribunal considered that the main issues involved in the present case were: (1) whether the Tribunal was competent to consider the application; (2) whether the JAB had correctly decided that it had no jurisdiction to review the Applicant's case; and (3) whether the Applicant's case was time-barred.

As stipulated in article 2.1 of the Statute of the Tribunal, the Tribunal should be competent to hear and pass judgment upon applications alleging non-observance of contracts of employment of staff members. As the Applicant was a staff member when he filed the application, the Tribunal had jurisdiction *ratione personae*. However, what the Applicant was actually seeking was a revision of the terms and conditions under which he had served prior to his fixed-term appointment, when his contractual status was based on SSAs and not on a letter of appointment subject to the regulations of the Organization. The Tribunal examined the Applicant's SSA and noted that the contract specified that individuals engaged under an SSA were neither staff members under the Staff Regulations of the United Nations nor officials. Accordingly, the threshold requirements of article 2.1 of the Statute of the Tribunal were not satisfied. Thus, the application was not receivable *ratione materiae*.

As the Applicant's SSA provided for arbitration in the event of dispute, the Tribunal stated that the only recourse available to the Applicant for the period of his SSA service would have been binding arbitration. The applicant was thus not entitled to raise now a dispute in the internal justice system under the guise of a new claim against the Administration.

As to the question whether the claim was time-barred, the Tribunal noted that the Staff Rules prescribed that a staff member wishing to appeal an administrative decision should first address a letter to the Secretary-General within two months from the date

on which the staff member received notification of the decision in writing. The Tribunal could not accept the argument by the Respondent that the administrative decision in question was that conveyed to the Applicant by UNJSPF on 29 July 1999. If the decision under appeal had been a decision by UNJSPF rather than the Administration, the Applicant would have had to bring a case against UNJSPF in accordance with the regulations of UNJSPF, and the JAB would have had no jurisdiction over the dispute. The Tribunal found that the decision in question was that taken by the Organization on 27 October 2003, and that, consequently, the appeal was not time-barred.

Finally, the Tribunal took the opportunity to review the Organization's use of SSAs. The Tribunal states that it was disquieted by the inherent contradiction involved in repeatedly engaging personnel on SSAs, which provided for contractor status without the safeguard of staff rights. The Tribunal, mindful that it might not act *ex aequo et bono*, however, noticed that personnel on SSAs enjoyed additional remuneration and compensatory benefits, which staff members of the United Nations did not enjoy. It was also aware of the fact that the Applicant entered freely and willingly into each and every one of these agreements and thus contributed to the creation and renewal of the situation. Therefore, the Tribunal decided not to seek to undo such agreements for the time being.

10. Judgment No. 1413 (8 October 2008): Applicant v. *The Secretary-General of the United Nations*[13]

Standing of third party before the tribunal—Conclusion of an agreement—Reimbursement of reasonable legal fees—Terms of the agreement—Applicant initially assisted in investigation, but later faced disciplinary charges—Amendment to agreement

The Applicant joined the Organization in 1965 and was appointed Under-Secretary-General and Executive Director of the United Nations Office of the Iraq Programme (OIP) in 1997. He served in that capacity until the end of the OIP in 2003 and assisted with the closing down of the Programme. The second Applicant in this case was the law firm, Baach Robinson & Lewis PLLC, who had represented the Applicant in an investigation involving him, which had given rise to the current dispute.

In April 2004, the Secretary-General appointed the Independent Inquiry Committee (IIC) to investigate the administration and management of OIP. The Applicant made a request that he be allowed legal representation and that the Organization pay the legal expenses he would incur in his participation in the investigation. In September 2004, the Applicant was advised that his counsel could be present, and, according to the Applicant's submission, the Chef de Cabinet gave him a verbal undertaking that the Organization would cover the expenses of his legal representation. Pursuant to the Interim Report of IIC, the Applicant was suspended from duty pending disciplinary proceedings on 3 February 2005.

On 23 February 2005, the newly appointed Chef de Cabinet informed the Applicant that the Organization would only cover the costs of his representation incurred up to 3 February 2005. However, on 31 March 2005, the Applicant was informed that in the light of the

[13] Spyridon Flogaitis, President; Jacqueline R. Scott, First Vice-President; Dayendra Sena Wijewardane, Second Vice-President; Brigitte Stern, Goh Joon Seng, Sir Bob Hepple and Agustín Gordillo, Members.

findings of IIC, the United Nations did not consider it appropriate to reimburse him. The Applicant's subsequent request for reconsideration was rejected. The Applicant requested administrative review of this decision and lodged an appeal with the Joint Appeals Board (JAB) on 13 July 2005. In its report of 6 February 2006, the JAB held that a binding agreement had been concluded by the Respondent and the Applicant, whereby the Respondent had agreed to pay the legal fees; and that later an amendment had been made to the agreement to which both parties had agreed. Therefore, the JAB recommended that the Applicant's legal expenses be reimbursed up to 3 February 2005. The Secretary-General, however, rejected the JAB findings and recommendation. On 5 April 2006, the Applicant submitted the application to the Tribunal, as did the second Applicant.

The first issue that the Tribunal considered was whether the second Applicant had any standing before the JAB or the Tribunal. The Tribunal noted that the agreement on reimbursement was concluded between the Organization and the Applicant. Without an effective assignment, it conferred no right of action or interest enforceable by the second Applicant against the Organization. Hence, the Tribunal concluded that the second Applicant had no standing under article 2 (b) of the Statute of the Tribunal.

The Tribunal went on to determine whether there had been an enforceable agreement to reimburse the Applicant the legal fees incurred by him in the IIC inquiry and, if so, for what period of time.

First, the Tribunal was satisfied that the Chef de Cabinet had the authority to make such an undertaking. It noted that Article 97 of the Charter conferred on the Secretary-General the powers of chief administrator of the Organization. It also noted that the commitment to pay legal expenses in this case was made by the Chef de Cabinet on behalf of the Secretary-General and that it was clearly deemed as "in the interest of the Organization." The Tribunal then stated that it was thus a promise on behalf of the Respondent by a person who had actual or at least ostensible authority to make such a promise which became legally binding.

Second, the Tribunal found that the Applicant had a reasonable expectation resulting from that promise. Though the undertaking had not been put in writing, the Respondent acknowledged the existence of such an oral agreement in the letter of 23 February 2005 to the Applicant, albeit restricting the payment to "reasonable legal fees" incurred up to 3 February 2005. Therefore, the Tribunal concluded, a valid and binding agreement between the parties existed and an expectation was justified.

Third, the Tribunal was of the view that this entitlement could not be unilaterally taken away by the Respondent in the absence of an express reservation. The Respondent contended that the undertaking was subject to a presumption of no wrongdoing of the Applicant. However, the Tribunal was not satisfied with that reasoning as the letter of 23 February 2005 had been issued after the IIC interim report and the Applicant's suspension. Moreover, such presumption contradicted the fact that the Applicant was required to participate in the IIC investigation precisely because of allegations of impropriety against him. The Tribunal, therefore, concluded that the agreement by the Organization to pay legal fees incurred by the Applicant for assisting IIC was not subject to any such reservation.

Having concluded the existence of a legally binding agreement between the parties, the Tribunal moved on to discuss whether the Applicant was entitled to payment of legal

fees beyond 3 February 2005. The Tribunal took note of the fact that the situation had changed from one in which the Applicant was assisting the IIC investigation to one in which he was facing disciplinary charges. In the Tribunal's opinion, the change of circumstance warranted the amendment made in the letter of 23 February 2005. As amended, the Applicant was not entitled to payment beyond 3 February 2005.

Finally, the Tribunal considered what legal fees should be reimbursed. It first noticed that there was no evidence on record that the Applicant had actually made any payments to his counsel. Second, the Respondent indicated that only "reasonable legal fees" for services in connection only with the Applicant's appearance before the IIC would be paid to him, without specifying what such "reasonable fees" would be. Based on the undertaking, the Tribunal was of the view that the Respondent should pay to the Applicant all reasonable legal fees incurred by him up to 3 February 2005, and in order to ascertain the reasonableness of the fees billed, an independent audit of the law firm's invoice would be required. The Tribunal so ordered.

Mr. Agustín Gordillo concurred with the majority decision but partially dissented with its reasoning as to why it admitted part of the complaint. In a separate opinion, he stated that, in his view, a legally binding agreement had not come into existence. He noted that, had the Organization been a private company, it might reasonably be held liable for its alleged promise. However, as an international organization, he believed that the theory and practice of government or public sector contracts should be applied. He observed, *inter alia,* that the normal rules of procurement procedures had not been applied, no budgetary provisions had been made or invoked, no formal written contract had been entered into, and no specific or general rule or regulation authorizing such reimbursement had been invoked. Thus, according to the statutory norms of the Organization, no legally binding promise or agreement had been entered into.

11. Judgment No. 1414 (30 January 2009): Applicant v. *The Secretary-General of the United Nations*[14]

Allegation of misconduct—Procurement rules 9.002 and 9.0016—Financial rules 110.18 and 110.21—Obligation of "absolute impartiality" towards all bidders in procurement process—Allegations must be sufficiently specific and certain—Denial of due process if disciplinary measures are imposed on the basis of charges not previously notified to staff member—Proportionality of disciplinary measure—Compensation for damage and moral injury

The Applicant joined the United Nations in 1980. During the time of the alleged misconduct, he was serving as Chief of the Sanctions Branch and Deputy-Director of the Security Council Affairs Division, Department of Political Affairs, in which capacity he supported the Iraq Sanctions Committee and worked closely with the Steering Committee set up by the Secretary-General to establish the Oil-for-Food Programme (OFP).

In 1996, a competitive bidding process was initiated to select a company to conduct inspections of Programme-financed humanitarian goods that would enter Iraq. The Brit-

[14] Spyridon Flogaitis, President; Jacqueline R. Scott, First Vice-President; Dayendra Sena Wijewardane, Second Vice-President; Brigitte Stern, Goh Joon Seng, Sir Bob Hepple and Agustín Gordillo, Members.

ish company Lloyd's Register Inspection Ltd. (Lloyd's) and the French company Bureau Veritas (Veritas) both participated in the bidding and Veritas gave the lowest bid while Lloyd's was the second lowest. The Procurement Division recommended awarding the contract to Veritas but the Applicant did not agree. Prior to the Steering Committee's meetings to consider the matter, the Applicant told an official of the United Kingdom Mission that Veritas' bid would be approved because of the extremely large price discrepancy between Veritas and Lloyd's bids. He also described how much lower the Lloyd's bid needed to be in order to compete with Veritas. Later, Lloyd's lowered its bid bringing it much closer to Veritas,' and finally won the contract.

On 3 February 2005, the Applicant was advised that based on the interim report of the Independent Inquiry Committee (IIC) which had been tasked with investigating into the allegations against the OFP, he had been suspended from duty with full pay. On the same day, the Secretary-General issued a letter to all staff, in which he pointed out the Applicant's name and the allegations against him. The next day, in the letter to the Assistant Secretary-General for the Human Resources Management, the Applicant contended that he had not been charged with any act of misconduct and that the suspension decision was procedurally flawed and prejudicial to his right of due process.

On 8 February 2005, the Applicant received a letter charging him with misconduct, "specifically with tainting, and actively participating in prejudicing and preempting the procurement process for the award of the humanitarian goods inspections contract" in violation of financial rules 110.18 and 110.21, and procurement rules 9.002 and 9.0016. He was also charged with failing to cooperate with IIC. On 23 February 2005 the Applicant denied all the charges against him and on 25 February he requested a review of the decision.

On 31 May 2005, the Office in Charge of the Department of Management informed the Applicant that the Respondent had decided that he should be summarily dismissed for serious misconduct. On 6 June 2005, the Applicant filed a formal request for review by the Joint Disciplinary Committee (JDC). The JDC issued its report on 14 October 2005, in which it found that the Applicant's conduct had been legal as the relevant information had moved into the public domain before he transmitted them to the U.K. Mission. In November 2005, the Applicant was informed that the Secretary-General remained of the view that he had violated the procurement rules that required him to act with "absolute impartiality." The Secretary-General, however, rescinded the decision to summarily dismiss the Applicant and instead imposed a written censure. The Applicant subsequently filed an application with the Tribunal.

As to the question whether the Applicant's rights of due process had been violated, the Tribunal first noted that the Charter of the United Nations and the Staff Regulations both regulated the conduct of United Nations staff members. As expressed in the case-law of the Tribunal, the Staff Regulations vested the Secretary-General with authority to determine whether a staff member had met the required standards of conduct and may impose disciplinary measures on staff whose conduct was unsatisfactory. However, the Secretary-General's powers were not absolute, and subject to review by the Tribunal. The Tribunal stated that allegations of misconduct must be sufficiently specific and certain to enable a staff member to understand exactly which conduct was called into question and precisely which staff regulation or rule was alleged to have been violated. In the present

case, according to the facts, the Tribunal found that the charges were sufficiently clear and that the Applicant was fully aware of the precise misconduct with which he was charged.

The Tribunal further considered whether the written censure had been imposed on the Applicant on different grounds than those upon which he had originally been charged. The Tribunal recalled Judgement No. 744 (1995) in which it had found that a disciplinary measure imposed on the basis of charges not previously notified to the staff member constituted a violation of due process. In the present case, however, the Tribunal found that the requirement to remain impartial in the tender process was one element of the original charges against him; consequently, there had not been a shift in grounds between the original charge and the sanction of the written censure.

The Tribunal observed that, according to the JDC's findings and the Applicant's own admission, there was little dispute as to the material fact underpinning the Applicant's written censure, that he had made contact with the United Kingdom Mission in regard to the award of the contract. Thus, it was obvious that the Applicant had a full opportunity to respond to this admitted fact. As the Tribunal accepted the JDC's finding that the Applicant had discussed the details of the bid with the U.K. Mission, it found that there was sufficient evidence to establish that the charges had been well-founded.

The Tribunal turned to find whether the facts as established constituted misconduct. Albeit the JDC's findings, the Tribunal concluded that even if the information was already in the public domain before it was conveyed to the United Kingdom Mission, this did not exonerate the Applicant from the charge that he had breached the Procurement Rules in respect of "absolute impartiality." The wording of procurement rules 9.002 and 9.0016 was very specific. Providing information prior to the award to any person who was not an official of the Untied Nations was a breach of the rules; thus, it was entirely reasonable for the Respondent to decide that it constituted misconduct.

The Tribunal subsequently addressed the clam by the Applicant that the Respondent had acted in breach of staff rule 110.4, which limits the Secretary-General's discretion in that no staff member should be subject to disciplinary measures until it had been referred to the JDC, unless there was a waiver by mutual agreement or the seriousness of the misconduct so warranted. However, the Tribunal was of the view that the wording of staff rule 110.4 was wide enough and that the Secretary-General, having had the benefit of a consideration of the matter by the JDC, was entitled to a broad discretion to make a final decision irrespective of how the JDC came to seize the matter.

The Tribunal found that the sanction of written censure was proportionate because the Applicant's breach of the procurement rules was not merely a technical breach but a substantial one.

The Tribunal finally discussed the problem of compensation and costs. It stated that it considered the humiliation, moral harm and reputational damage incurred to be of utmost relevance. It found itself wholeheartedly in agreement with the conclusion of the JDC that summary dismissal was disproportionate under the circumstances of this case. Further, the rescission of the summary dismissal and imposition of a written censure could not be construed as repairing the damage to the Applicant's reputation. Thus, the Tribunal agreed that the Applicant deserved compensation for such damage and for the moral injury and humiliation he suffered. With respect to the costs, the Tribunal was not satisfied that the

Applicant had been obliged to incur unavoidable costs and the plea for costs was therefore rejected.

Mr. Spyridon Flogaitis issued a separate opinion in which he argued that the due process rights of the Applicant had indeed been violated. He stated that, while the final decision of the Secretary-General relied on procurement rules which were cited in his initial letter of charges, and therefore was not a clear case of "shift in grounds," it had led to the same result as a shift in charges, namely that the Applicant had not been clearly accused and had been left unable to defend himself.

Mr. Flogaitis pointed out that the general principles of law demanded absolute and detailed certainty in charges as a direct consequence of the need for due process. Though it could not be considered that a staff member's rights were automatically violated if there was a difference in wording between the charges and the ultimate findings, the nexus between the initial charges and the findings must be apparent and narrowly construed.

Mr. Agustín Gordillo also issued a separate opinion, in which he concurred with Mr. Flogaitis in that the Applicant's rights of due process had been violated. Further, in his opinion, this case presented similarity with Judgment No. 1404 where the Tribunal had been confronted with what amounted to a trial by the press, where an individual staff member had been officially singled out for public reproach, only for the authorities to later discover that the accusations against him were groundless; and so as an attempted face-saving gesture a written reprimand was imposed on the applicant. In that case, the Tribunal had ordered the rescission of the written reprimand and awarded compensation. For reasons of congruence, Mr. Gordillo believed that the present case ought to have been approached in the same way.

12. Judgement No. 1426 (30 January 2009): Applicant v. *The Secretary-General of the United Nations*[15]

Compensation for service-incurred injury—Compensation under appendix D of the Staff Rules and under the Malicious Acts Insurance Policy (MAIP)—Breach of Applicant's rights and legitimate expectation that a medical board be constituted to consider her claim—Subsequent injury not treated as separate claim—Prerequisite that claim be submitted for administrative review and consideration by Joint Appeals Board (JAB) prior to consideration by Tribunal

The Applicant entered the United Nations in 1985 and was serving as personal assistant to the Special Representative of the Secretary-General in Baghdad, Iraq, at the material time. In 2003, the United Nations offices in the Canal Hotel in Baghdad were attacked and damaged by a car bomb. The Applicant suffered multiple injuries including loss of vision in her left eye, for which she received intensive medical care.

In 2003, the Applicant filed a claim with the Advisory Board for Compensation Claims (ABCC) under appendix D of the Staff Rules. She was then informed that her multiple injuries were treated as service-incurred and therefore all medical expenses would be reimbursed by the Organization. On 23 April 2004, the Applicant wrote to the Secretary-General requesting compensation for her injuries. In February 2005, she filed a claim

[15] Spyridon Flogaitis, President; Dayendra Sena Wijewardane, Vice-President; and Sir Bob Hepple, Member.

with the ABCC for compensation. In March 2005, the Applicant's physician informed the Administration that the Applicant had re-injured her left eye which caused her service-incurred injury to become more severe. In May, the Applicant was informed that the ABCC made its initial determination to award her compensation of USD 63,300 under appendix D. In addition, she was granted an award of USD 45,000 under the Malicious Acts Insurance Policy (MAIP).

On 16 June 2005, the Applicant's counsel wrote to the Secretary-General requesting reconsideration of the initial award in light of her new injury, that a medical board be constituted by the ABCC to consider her request, and that the award granted under the MAIP be reconsidered. In addition, the Applicant requested that the Respondent agree to submit any further appeals to the United Nations Administrative Tribunal without any recourse to the Joint Appeals Body (JAB).

The Applicant was informed that it would be premature to discuss whether submissions could be made directly to the Tribunal. In May 2006, the ABCC informed the Applicant that it would reconsider her case. It subsequently increased the level of the Applicant's loss of function from 27 per cent to 38 per cent and recommended that the award be increased to USD 89,090. The Applicant was informed that the Secretary-General had accepted this recommendation, and did not appeal the decision nor make a request for a constitution of a medical board. In July 2006, she submitted a request for reconsideration of the award granted under the MAIP, and she was subsequently informed that her payment was increased to a total of USD 120,000. In August, she filed the application with the Tribunal.

The Tribunal first considered whether the Applicant's claim for higher compensation under appendix D was receivable. The Respondent contended that the Applicant's new claim was based on her subsequent injury rather than constituting a challenge of the ABCC's previous findings. The Tribunal found this contention unfounded. First, the letter of 16 June 2005 and the Applicant's statement attached thereto did not request further compensation in respect of a new injury. Second, as the Administration was made aware of the subsequent injury on 11 March 2005, the determination of 23 March must therefore be presumed to have been made with the knowledge of this new injury. After examining a statement written by the Applicant's counsel, the Tribunal concluded that the Applicant had not presented the new injury as a new claim but rather as proof that the original injury had caused permanent loss of vision.

The Tribunal noted that the Applicant had not received any response to this request until a year later, on 20 June 2006. The ABCC totally disregarded her request for a medical board which was mandated under appendix D. That was a flagrant breach of the Applicant's rights and her legitimate expectation that a medical board would reconsider her case in the light of all evidence. Since the Tribunal had neither the power nor the competence to reassess the type and degree of disability, and as only the ABCC could make such an assessment, the Tribunal deemed proper to remand the matter back to the ABCC for correction of the required procedure. The Tribunal stated that, though five years had passed since the Applicant's injury, and three years since the request for a medical board was first made, it would not be futile to convene a medical board to consider whether the type or degree of disability was more severe than it was at the time of the assessment on 18 May 2006. As the procedural mistake of the ABCC had obviously caused a substantial delay

in the settlement of the Applicant's claim, the Tribunal awarded compensation of three months' net-base salary.

The Tribunal went on to consider whether the Applicant's claim in respect of the MAIP and her claim based on breach of statutory duty and/or gross negligence were receivable. The Tribunal viewed the latter claim as being for alleged non-observance on the part of the Organization of the Applicant's contract of employment. The main evidence produced in support of these allegations was the finding in the report of the Independent Panel on the Safety and Security of United Nations Personnel in Iraq that the United Nations security management system failed to provide adequate security.

With respect to both claims, the Tribunal observed that, according to the Staff Rules and the Statute of the Tribunal, it was an essential prerequisite for a claim that the Applicant must have submitted the matter for administrative review first and then for consideration by a JAB before coming to the Tribunal, unless there was an agreement on direct submission to the Tribunal. Though the Applicant had requested the Secretary-General to agree to direct submission to the Tribunal, an agreement had never been reached on the issue. Having considering the Applicant's request to the ABCC to reconsider her claims on 16 June 2005, the Tribunal nevertheless decided to construe the Applicant's request as a claim for administrative review. The Respondent's position that such a claim was premature permitted the Applicant to operate under the impression that the ABCC would consider both of her medical and administrative claims. Though it did not amount to a violation of due process, the Tribunal found that the Respondent could not rely on its own actions or omissions to prevent the Applicant from exercising her claims before the JAB. Accordingly, the Tribunal remanded the administrative pleas to the JAB, and in view of the time already elapsed, the Tribunal requested the JAB to expedite the case.

13. Judgement No. 1429 (30 January 2009): Applicant v. *The Secretary-General of the Untied Nations*[16]

Denial of renewal of contract—Procedural flaws in the performance evaluation process—Judicial review over the exercise of the discretion of the Secretary-General—Assessment of compensation under the circumstances of procedural flaws

The Applicant was initially recruited by the World Food Programme (WFP) in 1999 and was granted a fixed-term contract at the G-6 level under a United Nations Development Programme (UNDP) appointment in 2000. Her contract was subsequently extended once and expired on 7 January 2002.

In June 2001, the Applicant's performance for the period 1 February 2000—1 January 2001 was evaluated, in which she was encouraged to improve her performance in a number of areas. The Applicant protested the assessment. However, the Career Review Group (CRG) indicated that she must show improvement in the questioned areas by the end of the next assessment period. The Applicant unsuccessfully attempted to rebut this evaluation. In the evaluation of the Applicant's Management and Appraisal of Performance (MAP) for the year 2001, which was completed on 29 November 2001, her performance was

[16] Spyridon Flogaitis, President; Dayendra Sena Wijewardane, Vice-President; and Goh Joon Seng ,Member

rated as "unsatisfactory." The CRG recorded "critical incidents" wherein the Applicant's performance had caused serious problems for WFP, and complaints about her. Again, the Applicant unsuccessfully attempted to rebut this evaluation.

In December 2001, the Applicant was informed that her fixed-term contract would not be renewed. She requested the Inspector-General to conduct an investigation into alleged psychological harassment and abuse of authority on the part of her supervisors, but was informed that, upon reviewing her documents, there was no need for further action in her case. On 12 March 2002, a rebuttal panel was constituted to consider the Applicant's rebuttal of her 2001 MAP, which found that none of the new elements introduced warranted a change in the MAP. On 27 June 2002, the Applicant appealed the decision not to renew her contract to the WFP Executive Director. By a letter dated 2 July 2002, the Executive Director informed her that it was her finding that the contract had not been extended as a result of her unsatisfactory performance rather than any harassment.

In October 2002, the Applicant attempted to file an application with the Tribunal but was advised that her case was premature. By a letter of 19 May 2003, she was advised by UNDP that her case could not be considered by the Joint Appeals Boards (JAB), as she had not requested an administrative review of the decision not to renew her contract and that, moreover, her claim was time-barred. UNDP later advised her that the 19 May 2003 letter constituted the Administration's formal response which was appealable to the Joint Appeals Board. Accordingly, the Applicant lodged an appeal with the JAB which accepted her application on the basis of exceptional circumstances beyond her control, and her repeated efforts to appeal which demonstrated an active intent to contest the decision. The JAB determined that there had been a series of violations of her rights of due process, and recommended compensation of four months' net-base salary. The Secretary-General accepted this recommendation. The Applicant filed an application with the Tribunal, claiming, *inter alia*, rescission of the decision, reinstatement and damages.

The Tribunal first took note of the fact that the case was very similar to that considered in its Judgment No. 1237. In that case, the Tribunal held that, where an inadequate performance had been the reason for the decision and the process of evaluation had been seriously flawed, an implication arose that, whilst the Applicant did not have a right to extension, had a correct evaluation been made, the Applicant's contract might have been extended. When reasons are given for decisions made in the name of the Secretary-General, those reasons must be true, and they must be examined by the Tribunal for their truthfulness and consistency with the evidence. Having evaluated the reasons given for the decision not to renew the Applicant's contract, the Tribunal concluded that they were not well supported by sufficient evidence. It agreed with the JAB finding that there was a lack of transparency in the documentation of the Applicant's performance, and that as the Applicant's performance assessment was fundamentally flawed, it could not form the basis for a decision regarding her future employment.

The Tribunal recalled its Judgment No. 1238, in which it had observed that it must be self-evident that, where the reason invoked as justifying the making of a discretionary decision transpired to be false or disingenuous, the decision itself might be rendered invalid. However, where there was no right, the giving of a wrong reason could not create such a right nor place an applicant in a position where she should be treated as if such a right existed.

Therefore, in the present case, the Tribunal concluded that the Applicant ought to be compensated but not reinstated in service, as she had no right to the extension of her contract.

Next, the Tribunal commented on the timing of the impugned decision. According to the facts, the Applicant's evaluation for 2001 was completed on 29 November 2001 and she was informed of her "unsatisfactory" rating on 1 December. On 4 December, she was informed that her fixed-term contract, which was scheduled to expire on 7 January 2002, would not be renewed. However, the rebuttal panel was not constituted to consider her case until 12 March 2002. Recalling Judgment No. 1237, the Tribunal expressed its doubts as to why no consideration had been given to approving a limited extension of the Applicant's appointment, and as to why no steps had been taken to have the rebuttal procedure swiftly concluded. It was unacceptable that the decision as to her future employment had been taken before the rebuttal procedure was finalized. The institutional indifference to the Applicant's situation was demonstrated by the Administration's failure to make an effort to get the process on track, and this appeared to have aggravated the consequences of the flawed process.

As to the question of appropriate compensation, the Tribunal recalled its Judgment No. 1237, in which it had held that the possibility of the renewal of the contract, had the procedure not been flawed, should be taken into account for the purposes of assessing compensation for denial of due process. It had also held, in that case, that the fact that the Applicant had only served a short time was irrelevant because he had unfairly lost an opportunity to increase the length of service. For the same reason, the Tribunal concluded that the appropriate compensation in the instant case would be one year's net-base salary.

B. Decisions of the Administrative Tribunal of the International Labour Organization[17]

1. Judgment No. 2685 (6 February 2008): A.E.-R v. *International Telecommunication Union (IUT)*[18]

Removal of staff member from appointment and promotion board—Legitimate interest of each staff member to be a staff representative, deriving directly from terms of employment—Breach of freedom of association and freedom of expression—When a specific procedure exists for the appointment of a staff representative, a corresponding procedure for removal is implied—Staff representative's duty to attend and participate fully in meetings of the appointment and promotion board

[17] 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; European Telecommunications Satellite Organization; International Organization of Legal Metrology; International Organisation of Vine and Wine; Centre for the Development of Enterprise; Permanent Court of Arbitration; South Centre; International Organization for the Development of Fisheries in Central and Eastern Europe; Technical Centre for Agricultural and Rural Cooperation ACP-EU; International Bureau of Weights and Measures; ITER International Fusion Energy Organization; and Global Fund to Fight AIDS, Tuberculosis and Malaria. 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/.

[18] Mary G. Gaudron, Vice-President; Giuseppe Barbagallo and Patrick Frydman, Judges.

The Complainant was at the material time a staff representative on the Appointment and Promotion Board (the "Board"), which advises the Secretary-General in all cases where a vacancy is advertised.

In April 2005, the Board met to draw up a shortlist of applicants for the post of Head of the Study Group Assistant Unit in the Radiocommunication Bureau, at grade G-7. The Complainant and the other staff representative on the Board refused to examine the list of pre-selected candidates, on the ground that the qualifications required for the advertised post were not in conformity with the Common General Service Job Classification Standard for Geneva, and walked out of the meeting.

The remaining Board members decided to continue the procedure and drew up a shortlist of candidates which was submitted to the Secretary-General without the signatures of the two staff representatives. The Secretary-General found that the Classification Standard had been applied and asked that the Board, composed of the same members, meet again and re-examine the list of pre-selected candidates. The Board met on 8 June 2005 but was unable to reach a consensus on a shortlist of candidates. The staff representatives refused to sign the shortlist drawn up by the other members of the Board because the name of a candidate they had asked to be removed appeared on that list. During the meeting, a heated argument ensued between the Complainant and Mr. S, the representative of the Radiocommunication Bureau on the Board.

By memoranda dated 9 June 2005 and of 21 June 2005, the two staff representatives on the Board and the Staff Council, respectively, informed the Secretary-General that during the meeting of 8 June 2005 Mr. S. had made false allegations against the Complainant, had insulted her and threatened to take reprisals against her, and that the Complainant had been "physically approached" during the aforementioned meeting.

On 7 July 2005, Mr. S. asked the Staff Council, through a memorandum that was also sent to the Office of the Secretary-General, to relieve the Complainant of all her duties related to staff representation on the Board, on the ground that she had acted in breach of the Board's code of conduct and practices by deliberately obstructing the Board's proceedings, by manipulating the Board's members and by providing incorrect information concerning certain candidatures. The Office of the Secretary-General requested all the members of the Board to provide their comments on these allegations, and the Chairman of the Staff Council replied by expressing support for the Complainant and pointing out that she had represented the staff on the Board since 1990 without facing any criticism. The Chairman added that the Council had decided to reject Mr. S's request, and that that the Complainant had the Staff Council's support.

By memorandum of 24 November 2005, the Secretary-General informed the Complainant that her behaviour was incompatible with the role of a staff representative, which, in his view, was to defend the interests of all staff members. He therefore decided to release her from all her duties related to staff representation on the Board, and requested the Staff Council to propose another staff representative to replace her. On 28 November 2006, the Chairman of the Staff Council replied that the Staff Council had decided unanimously that the Complainant should remain a staff representative on the Board.

On 15 December 2005, the Secretary-General issued Decision No. 12542 on the composition of the Board, which no longer included the Complainant as a staff representative. Only one staff representative was identified. On 26 January 2006, the Complainant

requested a review of that decision, and, as her request was turned down on 3 March, she filed an appeal with the Appeal Board on 15 May 2006. The Appeal Board recommended that Decision No. 12542 be set aside. By a letter of 23 October 2006, which is the impugned decision, the Secretary-General informed the Complainant that he had decided to uphold Decision No. 12542.

The Tribunal considered unfounded ITU argument that the complaint was irreceivable on the ground that the Complainant had no individual right to be a member of the Board. It noted that it was clear that each staff member has an individual and legitimate interest in being a member of the Board or any other board or committee as a staff representative; therefore, each staff member, if appointed, had an individual legitimate right in not being removed. This right derived directly from a staff member's terms of employment and was therefore challengeable.

In response to the Complainant's plea regarding the misuse of authority and violation of the Staff Regulation and Staff Rules in the appointment of the staff representative members of the Board, the Tribunal noted, contrary to the Appeal Board's conclusion, that the decision was not a disguised disciplinary sanction. The Tribunal noted, however, that the Secretary-General's interference in the nomination of the staff representatives of the Board constituted a misuse of authority, and that the principles of freedom of association and freedom of expression had been breached when the Secretary-General substituted the Complainant's opinion and method of defending staff interests with his own.

In response to ITU plea alleging that the Secretary-General's decision had been taken with a view to ensuring the smooth running of the work of the Board and that he had the authority to designate its members by virtue of Staff Regulation 4.9, the Tribunal found that the Secretary-General should have respected the Staff Council's position to restate its full confidence in the Complainant instead of insisting on her replacement. The Tribunal considered the fact that the Secretary-General designated the staff representatives on the Appointment and Promotion Board from a list of names proposed by the Staff Council as enough to support the view that the Administration should hold consultations with the Staff Council and seek an agreement prior to removing a staff representative from the Board. The Tribunal further noted that, as there was a specific procedure to be followed in the appointment of a staff representative, that implied that there was a corresponding procedure for the removal of a staff representative. Consequently, a duly-appointed staff representative should not be dismissed by the Secretary-General without his inviting the participation of the Staff Council in the procedure. There was no such procedure in this case, and the Tribunal therefore decided that the impugned decision must be set aside.

For the above reasons, the Tribunal decided to award the Complainant 20,000 CHF in moral damages for the injury, distress and anxiety suffered. The Tribunal, however, pointed out that the Complainant's withdrawal from an official meeting because she did not agree with the majority opinion was inappropriate behaviour. As an appointed staff representative, she had a duty to attend and participate fully in the meetings of the Appointment and Promotion Board. Therefore, the Tribunal stated that the Complainant was not entitled to any other compensation. It observed that the request for an apology from Mr. S must be dismissed as it was not for the Tribunal to issue an injunction where the claim involved someone who was not party to the complaint. The Tribunal further

decided that ITU should pay the Complainant 5,000 CHF in costs, and that all other claims were dismissed.

2. *Judgment No. 2691 (6 February 2008): A. H.* v. *International Organization for Migration (IOM)*[19]

DECISION TO TRANSFER STAFF MEMBER TAINTED WITH PROCEDURAL ERROR—IMPUGNED DECISION IN FACT AN ATTEMPT TO IMPLEMENT BY A DIFFERENT ROUTE A PREVIOUSLY ANNULLED DECISION—EXHAUSTION OF ALL INTERNAL REMEDIES NOT NECESSARY WHEN FILING AN APPLICATION FOR EXECUTION—REINSTATEMENT AS AN IMMEDIATE AND INEVITABLE CONSEQUENCE OF THE ANNULMENT OF A TRANSFER DECISION—SECOND DECISION TO TRANSFER STAFF MEMBER DECLARED NULL AND VOID *AB INITIO*

The Complainant held a D-1 post in Vienna from January 1998 until 1 July 2006, when he was transferred to Berlin to another D-1 post. The facts relevant to this case are set out in Judgment No. 2575, delivered on 7 February 2007, in which the Tribunal ruled that the decision to transfer him to Berlin was tainted with procedural error insofar as the standard rotation procedure had not been followed, and for this reason annulled it.

Following the delivery of Judgment No. 2575, the Complainant indicated in an e-mail of 13 February 2007 to the Administration that he considered himself to be "automatically again assigned to Vienna," and to that end requested that the "relevant Personnel Action transferring [him] to Vienna [. . .] be issued effective 8 February 2007." He also acknowledged that a *de facto* interim arrangement had existed since 8 February 2007 and that, for practical reasons, it might be necessary to prolong it for a limited period. Consequently, he requested that he be put on travel status and paid a daily subsistence allowance as of 8 February.

On the same day, the Director-General informed him that the Administration understood the Tribunal's findings in the sense that the Complainant was "subject to rotation" and that even if his own previous decision was procedurally flawed, the Tribunal had not ordered the Complainant's "reinstatement to Vienna where [he was] posted from 1998 to 2006." The Director-General decided, in accordance with the authority conferred on him by Staff Rule 8.111.12, to transfer the Complainant within-grade to Berlin with immediate effect. This is the impugned decision.

The Tribunal rejected IOM argument that the impugned decision was a new decision and that the request of the Complainant should therefore be considered as the review of a new decision and not an application for execution. The Tribunal noted that the decision concerned the same person (the Complainant), the same subject matter (the transfer to Berlin) and the same cause (implementation of Staff Rule 8.11) as in the decision which was annulled by Judgment No. 2575. The Tribunal added that the impugned "decision" was no more than an attempt to implement, by a different route, the very decision annulled by Judgment No. 2575. Therefore, the Complainant was entitled to apply for the execution of that judgment since "[t]he case law has it that the exhaustion of all internal remedies is not necessary before filing an application for execution".[20]

[19] Ms. Mary G. Gaudron, President, Mr. Augustin Gordillo and Mr. Giuseppe Barbagallo, Judges.

[20] See Judgment No. 1978, under 3.

The Tribunal considered that, by annulling the transfer decision, it had placed the Complainant in the same legal position that he was in before the decision was taken. The Complainant's reinstatement was, according to the Tribunal, an immediate and inevitable consequence of Judgment No. 2575, and the Organization must therefore implement the Judgment by taking the consequent, material measures.

In view of the above, the Tribunal decided that the impugned decision dated 13 February 2007 must be declared null and void *ab initio* and that the Complainant must immediately be reinstated, at least administratively, in his former post in Vienna and must be placed on travel status for the period from 8 February 2007 until his reinstatement. The Tribunal also ordered the reinstatement through the school year 2007–2008 of the Complainant's entitlement to an education grant in respect of the cost of his son's education in Vienna, and awarded the Complainant to 3,000 EUR in costs.

3. *Judgment No. 2704 (6 February 2008): A. G. S.* v. *United Nations Industrial Development Organization (UNIDO)*[21]

Staff member not subject to performance appraisals or supervision as a result of release to perform functions as President of Staff Council—Merit promotions—Administrative Instruction No. 16 did not cover the Complainant's case—Effect of Administrative Instruction was to deny the Complainant a valuable opportunity—Complainant subject to detriment or disability due to his role as President of Staff Council—Discrimination occurs when persons in the same situation in fact and in law are treated differently—Dissimilar situations must be governed by rules that take account of the dissimilarity—Principle of equality infringed if the rules that govern dissimilarity are not appropriate and adapted to the dissimilarity—If the rules and procedures of international organizations do not ensure adherence to the principle of equality, it is their duty to initiate procedures that do—Not the function of the tribunal to proscribe a procedure

The Complainant joined the Organization in 1981 and was elected President of the UNIDO Staff Council in 1997. Upon taking up his functions as President, the Complainant was granted release from his duties on a 75 per cent basis, and from May 1999 he was granted full-time release. As a result, he was not subject to performance appraisals or supervision.

On 1 January 2003, the Director-General issued Administrative Instruction No. 16, which allowed for merit promotions for persons "whose performance over a number of years ha[d] consistently exceeded expectations, ha[d] been rated as very good or outstanding, and who ha[d] been at least seven years in the same grade." The Instruction required that "[p]roposals for merit promotions should be made by programme managers (directors and supervisors)," that they be considered by a Performance Review Committee and that, thereafter, the Committee's recommendations be submitted to the Director-General for approval. The Complainant's name was included on a preliminary list of staff members eligible for promotion. Following proposals by the programme managers, candidates were consideration by a Performance Review Committee. The Complainant was not recommended for promotion by his Management Director of the Division of Administration, under whose authority he fell for administrative purposes. Thus, when the names of those

[21] Seydou Ba, President; Mary G. Gaudron and Agustín Gordillo, Judges.

staff members whose promotion had been approved were announced on 17 July 2003, the Complainant was not amongst them.

On 13 February 2004 the Complainant lodged an appeal with the Joint Appeals Board, which in its report of 21 June 2006 concluded that the Organizations had correctly followed the procedures stipulated in Administrative Instruction No. 16. This recommendation was endorsed by the Director-General by a memorandum of 4 July 2006. That is the impugned decision.

The Tribunal first considered the Complainant's argument that the failure by the Performance Review Committee to consider his performance had been a fundamental breach of procedures. The Tribunal, however, rejected this argument, as the Complainant was in fact ineligible for consideration by the Committee as Administrative Instruction No. 16 clearly provided that "[p]roposals should be made by programme managers (directors and supervisors) and be submitted for review to the Performance Review Committee". Therefore, in the absence of a proposal, for whatever reason, the Committee had no power to make any evaluation, much less a recommendation with respect to the granting of a merit promotion.

The Tribunal noted that Administrative Instruction No. 16 did not cover the Complainant's case. Indeed its effect was to deny the Complainant a valuable opportunity that was available to all other staff members who had served seven years in the same grade. The Tribunal further observed that if the Complainant had not had a supervisor and could not have his work appraised, it was due to the fact that he had been granted full-time release only on the account that he was the President of the Staff Council. He was therefore, according to the Tribunal, subject to a detriment or disability because of his role as President of the Staff Council.

The Tribunal noted that the principle of freedom of association was infringed if a person was subject to a detriment or disability, or was discriminated against because of his or her activities within a staff association or, as here, within the Staff Council. It recalled that discrimination occurred when persons who were in the same situation in fact and law were treated differently. The principle of equality not only requires that "situations which are the same or similar be governed by the same rules," but also that "dissimilar situations be governed by rules that take account of the dissimilarity" (Judgement No. 2194). However, the Tribunal further recalled, the principle of equality may be infringed if the rules that govern dissimilarity are not appropriate and adapted to the dissimilarity (Judgement No. 2313). The Tribunal concluded that Administrative Action No. 16 had a disproportionate and discriminatory impact on the Complainant, and that discrimination had taken place.

The Tribunal observed that there was no rule to cover the Complainant's situation, and that it was of no consequence that he did not request an opportunity to have his case considered until after the Performance Review Committee had made its recommendations with respect to merit promotion for other staff. In this regard, the Tribunal recalled its Judgment No. 2313 in which it had stated that "if [the] rules and procedures [of international organisations] [did] not ensure adherence to [the] principle [of equality] [. . .], it [was] their duty to initiate procedures that [did], whether by way of general rule or some specific procedure for the particular case." That duty had been breached in the present case. However, the Tribunal did not consider it its function to proscribe a procedure or order UNIDO to consider the question of merit promotion for the Complainant. Moreover, the

Complainant retired from the Organization on 30 September 2007. In the circumstances, the proper course was, according to the Tribunal, to award 20,000 EUR in compensation for the wrongful denial of a valuable opportunity.

The Complainant further presented a number of claims regarding irregularities in the internal appeal proceedings. He contended a breach of due process as the composition of the Joint Appeals Board was changed in the course of the proceedings without him being notified, hence depriving him of his right to object to proposed membership. The Tribunal did not accept the argument, presented by UNIDO, that the allegations concerned the same clerical error as that for which the Complainant was awarded moral damages by Judgment No. 2662. While the two mistakes were closely related, in the sense that one led to the other, the Tribunal agreed that there were in fact two mistakes, and that they had both interfered with the Complainant's right to challenge the composition of the Board.

With regard to the delays in the proceedings, the Tribunal found that no part of the delay was referable to the Complainant who filed his rejoinder before he was advised of the composition of the Board and well before it commenced its deliberations. As in Judgment No. 2662, the Complainant was awarded moral damages in the amount of 5,000 EUR for the delay and other irregularities involved in his internal appeal.

4. Judgment No. 2706 (6 February 2008): C. C. v. World Intellectual Property Organization (WIPO)[22]

Transfer of staff member following sexual harassment against her—Organization's reaction not consonant with the duties of an international organization towards its staff—Duty of an organization to provide a safe and adequate environment for its staff—Sanction imposed in response to sexual harassment clearly not commensurate with seriousness of the misconduct—Disparity between complainant's grade and her actual duties—If the rules and procedures do not ensure adherence to the principle of equality, the Organization has a duty to take remedial steps, whether by way of a general rule or specific procedure in the particular case—The Tribunal should not substitute its own assessment for that of the Organization with regard to the reclassification of posts

The Complainant joined WIPO in March 1995 as a clerk at grade G-2 on a short-term contract. In November 1996, she was given a fixed-term contract at grade G-3 and, on 1 November 2000, she was promoted to grade G-4. As from September 2001, she was transferred at the same grade to the Expenditures Section of the Finance Division.

On 8 November 2002, the Complainant reported to the Organization's Ombudsperson, then on 6 March 2003 to the President of the Staff Council, that she had been sexually harassed by her supervisor, and also complained about another official's behaviour. The case was subsequently brought before the Director-General. At a meeting held on 10 March 2003, disciplinary action was taken against the two officials, who both received a verbal reprimand, which was recorded by placing a note in their respective personal file.

By a decision of 11 March 2003, the Complainant was transferred to the Knowledge Management Center and e-Library. In May 2004, the Complainant's new supervisor recommended her promotion, without success. On 8 June 2005, he wrote an internal memo-

[22] Seydou Ba, President; Claude Rouiller and Patrick Frydman, Judges.

randum in which he proposed that she be promoted to grade G-5 on the basis of the work she was actually performing. On 26 January 2006, after the Complainant had also applied for promotion, she was provided with a job description which she refused to sign, as she considered that it did not reflect her true responsibilities.

On 6 March 2006, the Complainant sent a letter to the Director-General in which she asserted that she had been treated in an unfair and discriminatory manner. Having received no reply, she lodged an appeal with the Appeal Board on 20 April 2006. In its opinion of 2 June 2006, the members of the Board unanimously found that the Complainant been subjected to sexual harassment and had been treated unfairly by the Organization. The Board considered that she had been "twice victimised" in that her career had been stymied after the incidents of sexual harassment, and recommended that the dispute should be resolved amicably. The Board thus proposed that the Organization should award the Complainant compensation in the amount of 30,000 CHF, ensure that she obtained promotion to grade G-5 and that, subject to certain conditions, it should consider promoting her to grade G-6. Failing amicable resolution on those bases, the Appeal Board recommended that the Complainant should receive a promotion to grade G-6, backdated at least six months.

By a decision of 11 August 2006 the Director-General announced that he wanted the matter to be resolved amicably, in accordance with the Appeal Board's recommendation. However, the Organization merely offered the Complainant financial compensation, but refused to grant her a promotion as part of the settlement. The Complainant challenged before the Tribunal the above-mentioned decision of 11 August 2006.

With regard to the receivability of the complaint, the Tribunal rejected the contention of the Organization that the claims therein were time-barred. In particular, the fact that the Complainant had not challenged each and every unfavourable decision concerning her as from her transfer on 11 March 2003 should not prevent her from seeking compensation for the injury she claimed to have suffered and to challenge the decision to deny her the promotion she had requested. Moreover, it was, according to the Tribunal, clear that the Complainant had repeatedly objected to the situation in which she had been since her transfer in March 2003, in particular that her grade did not tally with the actual level of her responsibilities.

The Tribunal observed, based on the evidence on the file, that the acts of sexual harassment which the Complainant had denounced had in fact taken place, contrary to the assertions of the Organization. The Tribunal considered that, in imposing a disciplinary sanction on the Complainant's supervisor, the Organization had necessarily acknowledged that they the acts of sexual harassment had occurred. It could therefore not dispute the merits of the Complainant's accusations during the proceedings, without contradicting itself and casting major doubts on whether its decisions regarding staff were taken in a responsible manner in such a sensitive area as that of discipline.

Given the nature and seriousness of the acts in question, the Tribunal noted that the Organization's reaction to the Complainant after she had denounced the sexual harassment was not consonant with the duties of any international organization towards is staff. The Tribunal emphasized that an international organisation has a duty to provide a safe and adequate environment for its staff, and is liable for all injuries caused to a staff member caused by their supervisor acting in the course of his or her duties (see Judgments Nos.

2524, 1609 and 1875). The Tribunal expressed its astonishment at the administrative action taken by the Organization in response to the denunciation of these acts, and found that the sanction imposed on her supervisor was clearly not commensurate with the seriousness of his misconduct. The fact that the supervisor's performance appraisal covering the period during which he was subject to disciplinary action was favourable in all respects indicated, in the view of the Tribunal, little regard for the duty of care that the Organization owed to the victim.

While acknowledging the argument put forward by the Organization that compensation for injuries should not take the form of a promotion, the Tribunal noted that the question in the present case was whether the Complainant had been unduly prevented from applying for promotion under the relevant procedures.

As far as the level of her responsibilities was concerned, the post held by the Complainant was at the time of the Judgment classified at G-4 level. The file, however, showed that in practice, owing in particular to the departure of colleagues whose work she took over, the Complainant had long been performing the duties of a library "assistant" or "technician" which go far beyond the content of the post as it was initially designed. This was confirmed in a detailed internal memorandum written by her supervisor on 8 June 2005, in which the disparity between the Complainant's present grade and the level of her duties was particularly stressed.

As for the possibility of promotion on merit, the Tribunal observed that it emerged from the Complainant's performance reports after her transfer to this post and from various internal notes concerning her work that her performance was praised. It further noted that the request for promotion of the Complainant, who had not received a promotion for seven years, in a manner which was hard to justify, encountered administrative obstacles which had prevented its proper examination by the competent bodies. The Tribunal considered that the Organization's dilatory attitude to the request for promotion submitted must be deemed improper because, if this promotion would have been justified on account of the classification of the post held, the situation thus created would result in unequal treatment to the detriment of the Complainant.

The Tribunal recalled its Judgment No. 2313, in which it emphasized that it was the duty of international organisations to abide by the principle of equality, and in particular to comply with its requirement that there be equal pay for work of equal value. As stated in the same Judgment, if their rules and procedures do not ensure adherence to those requirements in respect of their staff, it is the duty of an international organization to take remedial steps, whether by way of some general rule or by some specific procedure for the particular case.

The Tribunal stressed that WIPO could not legitimately rely on the procedural and time constraints inherent in its internal rules governing the reclassification of posts and the consideration of requests for promotion in order to justify the fact that, several years later, it had still not reached a decision on the Complainant's claims in this respect. The Tribunal added that the fact that the Complainant had been the victim of sexual harassment did not imply that her application for promotion had to receive preferential treatment. However, given the exceptional circumstances of her transfer, the Organization should have taken great care to ensure that she was treated correctly.

Thus, the Tribunal found that the Director-General's impugned decision must be set aside, and that the Organization's mishandling of the Complainant's application for promotion caused her moral injury calling for compensation in addition to that for any other injuries she had suffered.

With regard to the promotion, the Tribunal reiterated its past practice, recalling in particular Judgments Nos. 929, 1647 and 1874, according to which the grading of a post is a discretionary decision which should be taken by persons with particular training and experience in the matter. While the Tribunal may set aside a decision of reclassification on grounds of form or substance, it should not substitute its own assessment for that of the Organization. The case was therefore sent back to the Organization for it to reach a decision on this request in compliance with a number of conditions, and requested that the Organization review the classification of the Complainant's post and her application for promotion within six months of the date of the delivery of the present judgment. Furthermore, the Complainant was awarded 40,000 CHF in compensation for all the injuries suffered, and her costs in the amount of 7,000 CHF.

5. *Judgment No. 2709 (6 February 2008): S. V.* v. *European Patent Organization (EPO)*[23]

Calculation of reckonable experience after acquisition of the required level of education—Recognition of substantial equivalence of accredited engineering programmes—The Washington Accord, while not binding, should be taken into consideration by the Organization—Although the Organization is not bound by member State practice, it has a duty to explain an apparent inconsistency in its approach

The Complainant joined EPO on 1 November 2003 as an examiner at the European Patent Office, after he had received by fax of 11 October 2003 a copy of the offer of appointment. He responded to the offer by letter of 22 October 2003. Attached to the offer was a calculation of his reckonable experience for purposes of recruitment and promotion. This calculation showed that the Office would take into account as reckonable experience his period of employment from 24 May 2000 to 31 October 2003 and on that basis would assign him grade A-1, step 3.

Two months later, the Complainant informed the Office that there was an error in the preliminary calculation of his reckonable experience and that he would submit a request for recalculation once he had received all relevant documents from his former employers. Therefore, by a letter to the Personnel Administration Department dated 15 January 2004, he requested that his reckonable experience be recalculated to take into account his professional experience during the period from 15 May 1994, when he received his Bachelor of Science (BSc) degree in Electrical Engineering, to 24 May 2000, when he obtained his Master of Science (MSc) degree in Electrical and Computer Engineering, and that accordingly he should be assigned grade A-2, step 4. The Complainant argued that this experience had been gained "after acquisition of the level of education required under the minimum qualifications of the job description for the post in question," as required by Circular No. 271, given that his BSc degree was a "diploma of completed studies at university level" which would be the minimum qualification for the post of examiner.

[23] Seydou Ba, President; Mary G. Gaudron and Giuseppe Barbagallo, Judges.

By a letter of 11 June 2004, the Recruitment Department informed the Complainant that his request could not be granted based on the application of document CI/376/77 of 8 September 1977 that specified which diplomas applicants for posts as examiners were required to hold in the various member States. The document held that for degrees acquired in non-member States, EPO had decided that only a Master's or similar degree would be considered as equivalent to "an average European level of completed university education." On 1 July, the Complainant confirmed that his letter of 15 January should be considered as an internal appeal. Meanwhile, on 13 August 2004, the Personnel Legal Affairs Department sent a note to the Director of Recruitment indicating that the EPO minimum requirement for A-grade posts was a Master's degree for both member and non-member states, with the exception of Ireland and the United Kingdom for which a three-year degree was considered sufficient.

In its opinion of 24 April 2006, the Internal Appeals Committee unanimously recommended that the appeal be dismissed as devoid of merit, but that the Office should credit the Complainant with all or at least part of the experience he gained in the period between his Bachelor's and his Master's degrees, as an *ex gratia* settlement in view of the special circumstances of his case. By letter of 23 June 2006 the Complainant was informed that the President of the Office had decided to reject his appeal as unfounded and not to offer him an *ex gratia* settlement. That is the impugned decision.

With regard to the Complainant's university diploma, the Tribunal was of the opinion that a United States ABET-accredited BSc degree must be considered a "diploma of completed studies at university level." It considered as unsatisfactory the explanation given by the Organisation, namely that the Office had a certain "discretionary leeway" in deciding whether and when a diploma of completed studies at university level existed within the meaning of the job description.

In response to the Organization's argument that it was not bound by the Washington Accord, the Tribunal stated that the Washington Accord, while not binding, should be taken into consideration. Under the terms of the Washington Accord, which is an international agreement for the recognition of the substantial equivalence of accredited engineering degree programmes, an ABET-accredited United States BSc degree is equivalent to the United Kingdom BEng (Honours) degree, which is recognised by the Organisation. Therefore, logically, the Organisation should have no difficulty in recognising the Complainant's BSc degree as fulfilling the minimum education requirement. While the Washington Accord is not legally binding on EPO, it derived from a sound technical evaluation and the Organisation had a responsibility at least to consider it when making a choice based on the same technical evaluation. Furthermore, given that the United Kingdom recognised the ABET-accredited United States BSc degree as being equivalent to its own BEng (Honours), although it was not bound by the practice of member States, the Tribunal considered that the Organization had a duty to explain the apparent inconsistency of its approach.

The Tribunal recalled its Judgment No. 851, in which it considered that "some differences will have to be allowed in the content and standard of engineering degrees until there is international standardisation. For an international organization, the only fair and practical approach is to demand for an examiner's post the qualifications required for equivalent duties in the applicant's home country." In the same vein, the Tribunal recalled its Judgment No. 895, in which it ruled that "[f]or appointment as an examiner of patents

with the Organization the Complainant is required to have the qualifications he would need for appointment as an examiner in the patent office of his own country." The Tribunal noted that there had been a move towards international standardisation with the coming into force of the Washington Accord. As the Complainant's BSc degree would make him eligible to work as an examiner in his home country, the United States, according to the Tribunal's rulings in the two Judgments listed above, he should also be deemed eligible to work as an examiner for the Organization.

With regard to EPO refusal to recognize United States bachelor's degrees on principle, regardless of which member state's nationality the applicant held, the Tribunal noted that this statement was contrary to the considerations in Judgments Nos. 851 and 895. In addition, the Tribunal found EPO arguments to be contradictory, as the Organizations also claimed that "[i]t would be difficult for the member States to comprehend why the requirements for an examiner's post at the defendant [O]rganisation should be disregarded or made stricter than for national authorities." Since the United Kingdom national authorities recognized the ABET-accredited United States BSc degree as being equivalent to the United Kingdom BEng (Honours) and would therefore consider the applicant eligible for the post of examiner, the Organization should also find it reasonable to recognize that degree when recruiting and hiring employees. The Tribunal noted that the Organization's blanket disregard for United States BSc degrees appeared to be discriminatory.

In accordance with these considerations, the Tribunal concluded that the Complainant's ABET-accredited United States BSc degree must be considered a "diploma of completed studies at university level" and that the decision to deny his request for recalculation of his reckonable experience from the date of his United States BSc degree must be set aside. The Tribunal decided that the Complainant's reckonable experience and salary had to be calculated in accordance with the Organization's Service Regulations and Circular No. 271, from the date of receipt of his completed BSc degree, and that he must receive all consequential salary adjustments. The Tribunal requested the Organization to pay the Complainant 3,000 EUR in costs, and although there was no clear demonstration of bad faith on the part of the Organization, the Tribunal awarded the Complainant moral damages in the amount of 4,000 EUR to take account of the extended period during which he was retained in the wrong grade.

6. *Judgment No. 2720 (9 July 2008): D. J. G.* v. *International Telecommunication Union (ITU)*[24]

Circulation to all staff members of a letter presenting the organization's position with regard to a judgment of the Tribunal—Defamatory nature of statements—Right of reply—Outside the jurisdiction of the Tribunal to decide on alleged prejudice that the Tribunal itself may have suffered—Principle of *res judicata*—Obligation for international organizations to refrain from any type of conduct that may harm the dignity or reputation of their staff members—Exemplary damages for breach of obligation

The facts relevant to this case are to be found in Judgment No. 2540, delivered on 12 July 2006, concerning the Complainant's first five complaints. The Complainant had

[24] Mary G. Gaudron, Vice-President; Giuseppe Barbagallo and Patrick Frydman, Judges.

challenged before the Tribunal, *inter alia*, the decisions whereby he had been temporarily detached and subsequently transferred from the post of Chief of the Personnel and Social Protection Department ("Chief of Personnel"), and the Administration's decision to advertise that post. In Judgment No. 2540, the Tribunal set aside the expressed and implied decisions rejecting the Complainant's appeals with respect to his detachment, transfer and dismissal from the post of Chief of Personnel.

On 26 July 2006 a journalist for a Swiss daily newspaper informed the Complainant that he was going to publish an article on the ITU and Judgment No. 2540 the following day. After the ITU Head of Corporate Communication had been contacted by the journalist to obtain the ITU version of the facts, he sent an e-mail to all staff members of the Union containing the letter presenting ITU position with regard to the Judgment in question, and a summary of the facts of the case to the journalist.

The Complainant, considering these documents to be defamatory, requested the Secretary-General, on 1 September 2006, on the one hand to review the decision to circulate them to all staff members, and on the other hand to withdraw them officially through an e- mail to all staff, to present him with a formal apology, to give him the right of reply and to award him damages. On 16 October, the Secretary-General informed the Complainant of his decision not to withdraw the e-mail.

On 3 November 2006 the Complainant filed an appeal with the Appeal Board, which dismissed the Complainant's claims in its report of 9 January 2007, noting, in particular, that he had the opportunity of exercising his right of reply. This request had, however, already been denied by the Secretary-General in his decision of 16 October, and that position was confirmed following the delivery of the Appeal Board's opinion. That implicit decision was impugned in the present complaint.

The Complainant submitted that the content of the documents sent by e-mail on 26 July 2006 was defamatory, seriously infringed the obligations owed by international organizations to their staff members and violated the principle of *res judicata* and the respect due to the Tribunal.

The Tribunal decided not to respond to the arguments presented in the complaint regarding the prejudice that the Tribunal itself had allegedly suffered as a result of the circulation of the disputed message. The Tribunal considered that the issue raised in this regard, which had no direct bearing on the dispute between the Complainant and ITU regarding compliance with obligations arising from their contractual relationship, fell outside the Tribunal's jurisdiction, as restrictively defined in article II of its Statute. The Tribunal further considered that it could not rule on such arguments without breaching its duty of impartiality.

However, the Tribunal was of the view that it must, of course, rule on the Complainant's claim concerning harm done to his own interests, and stated in this regard that the circulation of the disputed message to the entire ITU staff was an extremely improper action that caused him serious harm. The Tribunal considered that the defamatory nature of the statements was compounded by the fact that they were based on a highly tendentious presentation of the facts, and found that the Secretary-General could not lawfully circulate a message to the staff expressing his view in the terms employed. The Tribunal added that, even if it were established that the complainant could have responded to the disputed state-

ments by circulating another message in the same form, these statements would in any case be no less defamatory on that account.

The Tribunal recalled, as it had consistently held, for instance in Judgments Nos. 396, 1875, 2371 and 2475, that international organisations were bound to refrain from any type of conduct that may harm the dignity or reputation of their staff members. The Tribunal added that this duty, which flowed from the general principles governing the international civil service, was also applicable as a matter of course to former staff members of an organisation, and therefore to the Complainant who had now retired. By its very nature, the act of circulating to all ITU staff, on the Union's own initiative, a message containing defamatory statements concerning the Complainant constituted a particularly serious breach of that duty. Moreover, the Tribunal considered that the breach was all the more reprehensible in the present case because it followed a pattern of vindictive action against him.

While the Tribunal did not deny that ITU had every right to circulate comments that were critical to the judicial ruling, it observed that the decision to pursue that route was taken in reaction to plans to publish a newspaper article and was not a spontaneous initiative.

Furthermore, and as contended by the Complainant, the Tribunal considered that ITU was not entitled, while circulating comments on the judicial ruling, to challenge the findings of fact made in the judgement, which had *res judicata* authority.

In view of the above, the Tribunal decided that the decision whereby the Secretary-General refused to remedy the consequences of the circulation of the e-mail of 26 July 2006 must be set aside. The Tribunal considered that the circulation of the e-mail to all staff clearly damaged the Complainant's dignity and reputation, and therefore decided that the Union should pay him damages in the amount of 20,000 CHF. In addition, the Tribunal decided that, for having acted in breach of the obligations incumbent upon the Organisation in its relations with its staff members, ITU should pay the Complainant exemplary damages in the sum of 10,000 CHF.

The Tribunal further granted the Complainant's request that ITU send a new e-mail to all staff retracting the content of the e-mail circulated on 26 July 2006. The Tribunal considered that the circulation of such an e-mail appeared to be the only way of ensuring that the present Judgment fully served the purpose of safeguarding the Complainant's honour and reputation *vis-à-vis* the ITU staff.

*7. Judgment No. 2742 (9 July 2008): M.d.R.C.e S.d.*V. v. *World Meteorological Organization (WMO)*[25]

Investigation of suspected case of fraud by staff member—Reorganization by the Secretary-General of Internal Audit and Investigation Services (IAIS)—Allegations of harassment in connection with fraud investigation—Allegation of harassment to be determined following a thorough investigation—Facts inconsistent with claim by Complainant of improper motive—Reassignment to a post which significantly diminished duties, responsibilities and status of staff member—Necessary power of an international organization to restructure some or all of its units, including by abolition of posts, the creation of new posts and

[25] Seydou Ba, President; Mary G. Gaudron and Dolores M. Hansen, Judges.

THE DEPLOYMENT OF STAFF—SUCH POWER IMPLIED EVEN IF NOT EXPRESSLY CONFERRED BY THE RELEVANT REGULATIONS—INCONSISTENCY WHEN RESTRUCTURING INVOLVES THE ABOLITION OF WHAT IS INTENDED TO BE STRENGTHENED—EXISTENCE OF IAIS MANDATED BY FINANCIAL REGULATIONS—ABOLISHMENT OF IAIS DONE WITHOUT LAWFUL AUTHORITY AND CONTRARY TO THE FINANCIAL REGULATIONS

The Complainant is a former official of WMO. She joined WMO on 1 June 2003 as Chief of the Internal Audit and Investigation Service (IAIS) at grade P-5, reporting directly to the Secretary-General. Her initial two-year fixed term contract was in due course renewed for a further period of two years.

Shortly after taking up her functions the Complainant was asked to investigate a suspected case of fraud involving at least one staff member. In light of her initial findings, the Organization decided, in November 2003, to refer the matter to the Swiss authorities so that criminal proceedings could be initiated. Meanwhile, the main perpetrator succeeded in escaping to Egypt. When the current Secretary-General took office in early 2004, he instructed the Complainant to pursue her internal investigation, focusing in particular on the role that other staff members might have played in the fraud. He also took a number of measures designed to strengthen the Organization's internal controls, including the establishment of an Audit Committee, to which the Complainant submitted a number of investigating reports. After having been informed that WMO senior legal advisor had made a telephone call to the main perpetrator the same day that he escaped to Egypt, the Complainant suggested that the senior legal advisor be kept aside from the internal investigation pending clarification of these facts. The Secretary-General asked the Complainant to remove her recommendations concerning the senior legal advisor from her reports before they were submitted to the Audit Committee on the grounds that her findings were unsubstantiated. However, the Complainant refused to do so. Following the submission by the Complainant of her final report to the Executive Council in June 2005, the Executive Council decided, upon a recommendation of the Audit Committee, that the internal investigation be closed, and that it should be reopened only if additional, substantial information became available.

During the second half of 2005, upon a recommendation by the Audit Committee in October 2004, steps were taken to reorganise the IAIS. Although various options were envisaged, including a proposal by the Complainant, the Secretary-General decided that IAIS be replaced with a new Internal Oversight Office (IOO) and that three new posts, one at grade D-1 and two at grade P-5, be created.

The vacancy note for the D-1 post indicated that the official in question would "[f]ulfil the function designated in the Financial Regulations for the Chief of [IAIS]." The Complainant applied for the post but was not selected. On 10 January 2006, she was notified of the decision to separate her from her functions as Chief of IAIS and to reassign her, with effect from 1 February 2006, to the grade P-5 post of Chief of the new Internal Audit Service (IAS) in which she would report to the Director of IOO. By memorandum of 20 January 2006, the Complainant requested that the Secretary-General reconsider this decision, arguing that it was contrary to the Financial Regulations. She further alleged that she was being harassed by senior management in connection with her investigation.

In an e-mail of 31 January 2006 addressed to the members of the Audit Committee, the Complainant stated that it was her duty to inform them of the Secretary-General's

decision to "abolish" the IAIS and that she would shortly send them a report on the matter. Having been reminded by the Secretary-General that communications with the Audit Committee should be channelled through him, she sent him the report in question on 8 February, asking that it be forwarded to the members of the Committee. The Secretary-General replied that the Complainant had a "clear and serious conflict of interest", and that she was therefore to "refrain from any further involvement in all internal audit functions regarding the reorganization of the internal audit services." On 23 February, she sent a message from her private e-mail address to the members of the Audit Committee, copying it to several representatives of the United States Department of State, in which she called into question the legality of restructuring the internal audit function, and attached a copy of the report she had submitted to the Secretary-General in February. She further asserted that, despite her recommendations, the Secretary-General had chosen not to lift the immunity of certain senior officials to enable them to be investigated by the Swiss judge.

On 14 March 2006, the Complainant lodged an appeal with the Joint Appeals Board contending that the reorganization of IAIS was unlawful, that her reassignment was "invalid," and that she had suffered harassment in connection with her investigation. In its report dated 21 September 2006, the Board recommended that the appeal be rejected as devoid of merit. By a memorandum of 4 October 2006, the Secretary-General dismissed the appeal in accordance with the recommendations of the Board. This is the impugned decision. On 3 November 2006, the Complainant was dismissed. The Complainant made a formal complaint of harassment to the Joint Grievance Panel and presented written submissions to it in March 2007. The report of the Panel was submitted to the Joint Appeals Board, and a final decision to close the case of harassment was made by the Secretary-General on 28 September 2007.

The Tribunal noted that the decision by the Secretary-General of 28 September 2007 was the subject of three further complaints to the Tribunal. A preliminary question arose with respect to the claim of harassment, as a general principle dictates that a person cannot litigate the same issue in separate or concurrent proceedings. The Tribunal pointed out that a final decision on the issue had nonetheless been taken by the Secretary-General, and that as the claim was before the Tribunal, it must be determined. However, it would be undesirable that the claim be determined in the absence of a thorough consideration of all the circumstances on which the Complainant relied. It was therefore decided that final determination of the harassment claim should await consideration of the various complaints filed in relation to the Secretary-General's decision of 28 September 2007.

The Tribunal observed that, whatever may be said of the events prior to mid-February 2005, the relationship between the Complainant and the Secretary-General underwent a marked change after the Complainant reported that the WMO senior legal advisor be "kept aside from the process temporarily, until the situation [. . .] is clarified." It further noted that the events following the Complainant's report referring to the senior legal advisor indicated a disregard for her role and responsibilities as internal auditor and a lack of respect for her dignity. However, even when considered in the context of other events on which the Complainant relied, they did not establish that the impugned decision was motivated by a desire to harm or injure the Complainant.

The Tribunal found that the facts were inconsistent with the type of improper motive claimed by the Complainant in relation to her reassignment. Firstly, there was nothing to

indicate that the appointment process to the D-1 post was flawed. Secondly, the idea of creating a D-1 post had been conceived as early as February 2005, well before the events developed with respect to the Complainant's reports referring to the senior legal advisor. Finally, as the internal investigation of fraud had been effectively closed in June 2005, it would be wrong to view the impugned decision as some form of retaliation for the Complainant having prevented the Secretary-General from corrupting the investigation process.

With regard to the reorganization of the internal oversight, the Tribunal recalled its Judgment No. 2510 in which it had stated that "an international organisation necessarily has power to restructure some or all of its units, including by abolition of posts, the creation of new posts and the redeployment of staff". The Tribunal noted that the word "necessarily" in that statement indicated that that power would be implied even if it was not expressly conferred by the relevant regulations. However, that power could not be implied if it was contrary to the regulations. At the relevant time, regulation 13.7 of the WMO Financial Regulations provided:

> "Under the broader scheme of internal oversight which would include the programme evaluation mechanism, the Secretary-General shall establish an Internal Audit and Investigation Service (IAIS)"

The Financial Regulations were amended by the WMO Congress in May 2007 to provide for the creation of IOO to replace IAIS and for the appointment of a Director of IOO with substantially the same powers, duties and responsibilities as those formerly reposed in the Chief of IAIS. These amendments took effect on 1 January 2008.

The Tribunal observed that the Executive Council had resolved in June 2005 that the Secretary-General should "strengthen the internal audit service on an urgent basis." It considered that there was no inevitable inconsistency between "strengthening" a service and restructuring it. However, there was an inconsistency when restructuring involved the abolition of what is intended to be strengthened. The legal effect of the WMO Congress resolution of May 2007 was to abolish the IAIS and replace it with the IOO. The same abolition occurred, *de facto*, when the Secretary-General appointed the Director of IOO with effect from 1 February 2006 and reassigned the complainant to the new post of Chief of IAS.

The Tribunal considered that the Executive Council resolution of June 2005 could not be construed as authorising the abolition of the IAIS, the existence of which was mandated by the Financial Regulations. The whole tenor of those Regulations was not only that the Secretary-General should establish the IAIS but also that he should maintain it until it was lawfully decided otherwise. Accordingly, any restructuring involving the abolition of the IAIS was contrary to the WMO Financial Regulations, as they stood until January 2008, and was until then beyond the power of the Secretary-General. Thus, the Secretary-General had acted without authority in abolishing IAIS and replacing it with IOO on 1 February 2006, and, inextricably, the reassignment of the Complainant from the same date had been likewise an act done without lawful authority.

Notwithstanding the Executive Council's subsequent confirmation of the Secretary-General's action, the Joint Appeals Board erred in holding that the Complainant's reassignment had been taken with lawful authority. The Secretary-General's decision dismissing the Complainant's internal appeal was therefore set aside. However, this did not, according to the Tribunal, mean that the Complainant should be reinstated in her former post, as

it had lawfully been abolished when the Financial Regulations were amended with effect from 1 January 2008.

The Tribunal subsequently turned to the claim made by the Defendant, referring to a number of press articles and television broadcasts, and legal proceedings initiated by the Complainant in national jurisdictions, that the complaint be dismissed as an abuse of process. The Tribunal found that, whatever the motives of the Complainant, she had a good cause of action and was entitled to have the matter determined. The Tribunal likewise rejected the argument made by the Defendant that the Complainant was estopped from bringing the present complaint, as she could not possibly be seen to have acquiesced in the abolition of her post as Chief of IAIS in applying to the D-1 post, the bare minimum necessary for an argument based on an estoppel.

The Tribunal concluded that the Complainant was entitled to substantial damages in consequence of the unlawful decision to reassign her to the post of Chief of IAS, which significantly diminished her duties, responsibilities and status, necessarily resulting in harm to her professional reputation. She had been put in a position where she could do nothing to prevent or correct what she had rightly perceived as an unlawful decision. Further, it must have been tolerably clear to her after June 2006 that it was unlikely that her situation could or would be reversed. The Complainant was consequently awarded 50,000 CHF in material damages, 20,000 CHF in moral damages, and costs.

8. *Judgment No. 2757 (9 July 2008): C. P.* v. *the International Criminal Court (ICC)*[26]

Summary dismissal—Serious misconduct—Reasonable threshold for a *prima facie* case—Reasonable grounds for belief and erroneous belief—Sexual assault—Due process and impartiality—Falsity of a statement—Bad faith or malice—Legitimate purpose of an internal complaint—Legitimate interest in the protection of the standing of the organization

The Complainant was employed by the ICC in the Office of the Prosecutor from 6 June 2004 until 13 April 2007 when a decision by the Prosecutor to dismiss him took effect.

The decision to dismiss the Complainant summarily had its origins in a complaint filed by him with the Presidency of the Court on 20 October 2006, in which he alleged, *inter alia*, that the Prosecutor had:

> "committed serious misconduct, either in the course of his official duties, which is incompatible with official functions, and causes or is likely to cause serious harm to the proper administration of justice before the Court or the proper internal functioning of the Court; or of a grave nature outside the course of his official duties that causes or is likely to cause serious harm to the standing of the Court, by committing the crime of rape, or sexual assault, or sexual coercion, or sexual abuse against [a named individual] and that for this reason he should be removed from Office by the Assembly of States Parties."

The internal complaint was accompanied by an audio tape which included a record of a telephone conversation between the alleged victim of the Prosecutor's conduct and a colleague of the Complainant. The alleged victim sounded distressed and denied that she had been forced to have sexual intercourse but did not deny that she had consented in order

[26] Ms. Mary G. Gaudron, Vice-President; Ms. Dolores M. Hansen and Mr. Patrick Frydman, judges.

to regain possession of her keys. A panel of three ICC judges was appointed in accordance with regulations 120 of the Regulations of the Court in order to determine whether the complaint was manifestly unfounded. They established contact with the alleged victim and interviewed her and the Prosecutor separately. By memorandum of 8 December, the Presidency, acting on the unanimous recommendation of the panel of judges, informed the Complainant of its decision to set aside the complaint as manifestly unfounded. It later emerged that this finding had been based on "unambiguous denials of the allegation [. . .] both by the person [. . .] alleged to be the victim and the [P]rosecutor."

On 23 January 2007, the Complainant was suspended from duty pending enquiries into the charges brought against him by the Office of the Prosecutor. Later, the Complainant was informed by letter of 16 March 2007 that the Prosecutor was "contemplating the possibility of dismissing [him] summarily for serious misconduct" pursuant to rule 110.7 of the Staff Rules.

The dismissal became effective on 13 April 2007, when the Complainant received the letter dated 11 April 2007 by which the Chief of the Human Resources Section informed him of the Prosecutor's decision. The Complainant submitted on 1 May 2007 a request for review of summary dismissal to the Disciplinary Advisory Board pursuant to staff rule 110.2 (c). On 18 June 2007, the Board issued a report in which it unanimously considered that the decision to summarily dismiss the Complainant was procedurally flawed. In the Board's view, the Prosecutor should not have participated personally in the decision-making process. By a letter dated 13 July 2007, the Prosecutor informed the Complainant that he had decided not to follow the Board's recommendation, and that he confirmed, by the same letter, his decision to dismiss him. This was the impugned decision.

The Tribunal considered that in the context of "serious misconduct," the question whether a statement was made falsely is not simply whether the statement is true or false. A statement made innocently, which turned out to be false, did not constitute serious misconduct. A statement was made innocently if the person concerned honestly believed on reasonable grounds that the statement was true. Conversely, for the purposes of serious misconduct, a statement was falsely made if it was both untrue and the person concerned did not believe on reasonable grounds that it was true. In the present case, there was nothing to suggest that the Complainant did not believe in the truth of what he wrote in his internal complaint. Thus, the only question was whether he had reasonable grounds for that belief.

The Tribunal added that, in determining whether a statement was objectively true or false, and when deciding whether the person who made the statement believed on reasonable grounds that it was true, the whole statement must be taken into account. The charge of serious misconduct was based on a single word in the internal complaint filed against the Prosecutor, namely, "rape." Doubtless, it was for this reason that the Disciplinary Advisory Board considered that the absence of confirmation by the alleged victim that force was used was vital to the question of reasonable belief. However, a proper reading of the internal complaint made it clear that there was no allegation of force. Rather, the allegation was that the alleged victim had consented to sexual intercourse in order to regain possession of her keys. Thus, for example, the Complainant stated that the alleged victim was "apparently under the erroneous belief" that, because there was no physical force, there was no rape or sexual assault. Moreover, the Tribunal observed that the Complainant did

not categorically assert that rape had occurred. Rather, he characterised the Prosecutor's alleged conduct as "rape, or sexual assault, or sexual coercion or sexual abuse" which, given differing national laws, is tolerably accurate. Under the circumstances, the Tribunal found that there was no basis for concluding that the Complainant did not believe on reasonable grounds the truth of what he had put in his internal complaint.

In response to the ICC consideration of what malice inferred, the Tribunal stated that malice is generally described either as the absence of good faith or as acting from improper motive. Frequently, the absence of a belief on reasonable grounds is sufficient to base an inference of malice. So, too, is the communication of information that is defamatory of a person to those who do not have a legitimate interest in obtaining that information. In this case, however, it was not established that the Complainant did not believe on reasonable grounds that what he had put in his internal complaint against the Prosecutor was true. In the absence of either of those considerations, it was necessary to point to some act or circumstance that positively indicated bad faith or improper purpose, such as personal animosity, revenge or the desire to obtain some personal or collateral advantage. The Tribunal specified that, as a finding of malice was a finding as to a state of mind or motive of the person whose conduct was in question, it was irrelevant that three judges and the President found the internal complaint against the Prosecutor to be "manifestly unfounded." According to the Tribunal, what was relevant was whether the person concerned believed on reasonable grounds that what he had said was true. The protection of the standing of the ICC and ensuring the observance of the law were legitimate purposes of an internal complaint, and it was therefore not relevant that the Complainant was neither the alleged victim nor her relative.

In response to the Complainant's argument that the decision to dismiss him summarily had been taken by way of reprisal for his lodging an internal complaint, the Tribunal considered that it was clear that the charge leading to the complainant's summary dismissal was made on the advice of an "external legal consultant," and that in these circumstances, it had not been established that that charge and the subsequent course of action constituted a form of reprisal.

With regard to the Complainant's argument that the Prosecutor should not have participated in the decision-making process in this case, the Tribunal recalled that it was a fundamental aspect of due process that a person should not take a decision in a matter in which he or she has a personal interest. The Prosecutor had a direct personal interest in establishing that the internal complaint against him had been made falsely and maliciously. The Tribunal had clarified that, in some circumstances, necessity will direct that a decision be taken by a person with a direct personal interest in the outcome. However, the fact that the Prosecutor had authority over the management and administration of the Office of the Prosecutor and was specifically empowered to dismiss staff members of the Office did not constitute necessity. As pointed out by the Disciplinary Advisory Board, he could have delegated that power in the present case.

As to other claims made by the Complainant with respect to due process, it was sufficient to state that there was no discernible error in the analysis of those arguments by the Board. The breach of due process that had occurred constituted a serious infringement of his rights and was compounded by the Prosecutor's action in maintaining his decision in the face of the internal memorandum from the Presidency indicating that there had been

no finding of bad faith or malice, and contrary to the recommendation of the Disciplinary Advisory Board.

For the above reasons, the Tribunal decided that the impugned decision must be set aside, as must the earlier decision to dismiss the Complainant summarily. The Tribunal further found that it was unnecessary to consider other issues raised by the Complainant, and that subject to the Complainant giving credit for any earnings from employment during the period, he was entitled to be paid his net base salary and post adjustment from 13 April until 30 June 2007, when his contract would otherwise have expired, plus repatriation grant and other benefits he would have received if his contract had then expired. All such sums should bear interest at the rate claimed by the Complainant, namely, 5 per cent per annum from due dates until the date of payment.

As the Complainant's summary dismissal for serious misconduct must inevitably have harmed his professional reputation and employment prospects, he was awarded material damages which the Tribunal set in an amount equivalent to two years' net base salary and allowances. The Tribunal furthermore decided to award the sum of 25,000 EUR for moral damages, and costs.

C. Decisions of the World Bank Administrative Tribunal[27]

1. *Decision No. 378 (18 March 2008): V.* v. *International Bank for Reconstruction and Development*[28]

Misconduct—Outside interests—Termination of employment—Discretion to reject tender of resignation—Inferences in the absence of direct evidence of wrongdoing—Proportionality of imposed disciplinary measure—Due process—Conduct of investigation

The Applicant joined the International Bank for Reconstruction and Development (the Bank) in October 1991 as a Financial Analyst in the Bank's Africa Region. On 11 September 2003, he was provided a Notice of Alleged Misconduct from the Director, Department of Institutional Integrity (INT), concerning substantial remuneration from a bank in Rwanda for services ostensibly rendered by a business entity owned by his wife while he was working for the Bank on projects in the country. The INT investigation began in 2003 and was completed in 2005, when its final report was sent to the Vice-President of Human Resources.

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[27] The World Bank Administrative Tribunal is competent to hear and pass judgment 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://lnweb90.worldbank.org/crn/wbt/wbtwebsite.nsf.

[28] Jan Paulsson, President; Stephen M. Schwebel and Francis M. Ssekandi, Judges.

The Vice-President for Human Resources concluded that there was substantial evidence in the report to show that the Applicant had engaged in the alleged misconduct, and subsequently terminated the Applicant's appointment on 21 September 2005 to be effective on 23 September. By letter of 21 September 2005, the Applicant also tendered his resignation to have immediate effect. The Bank refused to accept the Applicant's resignation in consideration that his contract had been terminated on grounds of misconduct. The Applicant thus sought to challenge the Bank's decision to reject his tendered resignation and its decision to terminate his employment for cause.

In particular, the Applicant challenged the INT Report which, he argued, had not been properly tested and thus could not constitute an adjudication of his guilt or innocence. The Applicant also challenged as arbitrary the decision to terminate his employment rather than to accept his resignation. Finally, the Applicant contended that termination was a disproportionate sanction, as his only proven offence was a failure to report to the Outside Interests Committee the contract for consulting services between his wife and the CEO of the bank in Rwanda.

The Tribunal considered that, while the Applicant bore no burden to prove his innocence, it was clear that the documentary evidence compiled by INT and the evidence provided by witnesses disproved his assertions that he was not guilty of misconduct. The Tribunal opined that evidence which, by unambiguous circumstances, reasonably leads to the conclusion of guilt was sometimes the best evidence available and was entitled to decisive weight. In this regard, the Tribunal considered that there was evidence from which the Bank could have reasonably drawn the inference that the Applicant had carried out concurrent outside employment while still a Bank official and had been paid for it. Accordingly, the Tribunal rejected the Applicant's contention that the Bank erred in finding him guilty of misconduct in the absence of direct evidence pointing to his receiving remuneration from the bank in Rwanda.

The Tribunal considered that the Applicant's knowing and intentional violation of the Bank's rules, and his attempt to conceal those violations, was a serious case of misconduct. Termination of employment in such a case could not be considered disproportionate. The Tribunal concluded that the Bank had every reason to reject the Applicant's attempts to resign to avoid the clear sanction befitting his misconduct.

Considering the Applicant's complaint that INT's investigatory process was flawed, the Tribunal confirmed that even where staff members were guilty of misconduct, and even though INT investigations were not to be equated with criminal investigations that could lead to penal sanctions, staff members were entitled to due process. The Tribunal observed that the concerns for due process at the investigatory stage related to the establishment of a fair and full record of facts, and to the conduct of the investigation in a fair and impartial manner. The Tribunal stated that those requirements did not necessarily demand conformity with all the requirements of judicial proceedings, and found that the value and weight of the testimony obtained by INT were not diminished solely because witnesses did not testify under oath and their testimonies were not transcribed verbatim.

The Tribunal addressed the Applicant's contention that he had not had the opportunity to discuss or even respond to the Bank's decision to choose termination rather than to accept his resignation, and that had only been allowed to comment on the INT report, but had not been able to participate in proceeding before a misconduct panel, as the pro-

cedure prescribes at the United Nations. The Tribunal was satisfied that the Staff Rules, which permitted staff members to make written and oral representations to the investigator, provided the opportunity to staff members to comment on the findings made in the Investigative Report and provided for such representations and comments to be appended thereto, had afforded the Applicant adequate protection and met the due process standard requirements. The Tribunal therefore found no basis for the Applicant's complaints that his rights of due process had been violated and that the final decision had been arbitrary.

Finally, the Tribunal considered the Applicant's challenge to the Bank's decision to restrict his access to the Bank's premises. The Tribunal was not persuaded by the Applicant's claims that he had a right, like "any other citizen," to have access to the Bank's premises without limitation. The Tribunal affirmed that it was a reasonable exercise of discretion, in circumstances such as those of the case at hand, to deny or restrict access of a staff member to the Bank's buildings or to a specific office.

For such reasons, the Tribunal dismissed the application.

2. *Decision No. 379 (18 March 2008): L. (No. 2)* v. *International Bank for Reconstruction and Development*[29]

Jurisdictional objection—Due process in misconduct investigatons—Due process—General scope of review by the Tribunal in disciplinary cases

The Applicant was a staff member of the International Bank for Reconstruction and Development ("the Bank") from 1988 to 2005. The Bank's Department of Institutional Integrity (INT) conducted two investigations into the Applicant's alleged misconduct during his tenure at the Bank. The two investigations lasted from 2005 to 2007 and resulted in two decisions of January 2007 and 17 April 2007 respectively, finding that the Applicant had engaged in misconduct and permanently barring him from future Bank employment and from access to Bank premises.

Over the course of the INT investigations, the press and media had published articles mentioning the Applicant's name in reference to the ongoing investigations. The Applicant claimed that he had asked the Bank at least seven times to investigate the source of the leaks to the news sources. He asserted that his requests had been ignored by INT; that the Bank thus had failed to protect his rights to privacy and confidentiality; and that in so failing it had violated his due process rights.

Following the disciplinary hearings against him, the Applicant sought the Bank's consent to file an application directly with the Tribunal pursuant to article II, paragraph 2, of the Statute of the Tribunal. The Bank agreed to his request but stated that its agreement was limited to the misconduct decisions only and did not include any other allegations that could be made by the Applicant. The Applicant accordingly filed his application with the Tribunal challenging the two misconduct decisions, including the Bank's alleged failure to protect his confidential personnel information and due process rights.

The Bank brought a jurisdictional objection to the Applicant's challenge on grounds that the application raised two additional claims, namely that the Bank had breached the confidentiality of his personnel information by disclosing such information to the media

[29] Jan Paulsson, President; Stephen M. Schwebel and Francis M. Ssekandi, Judges.

and press, and that INT failed to investigate these disclosures. The Bank argued that the Applicant had not requested the Bank to allow him to proceed directly to the Tribunal, nor had he exhausted internal remedies with regard to those two claims. It argued that the Applicant could not bring his untimely claims before the Tribunal through the back door by labelling them as "due process" claims and connecting them to his challenge of the misconduct findings and disciplinary measures, and that they were separate claims from those concerning the decisions on misconduct.

The Tribunal recalled that in accordance with its jurisprudence, articulated in *Cissé*, Decision No. 242 [2001], the scope of review in disciplinary cases was broader than with respect to decisions of a purely managerial or organizational nature. The Tribunal thus found that it had jurisdiction over the breach of confidentiality claim and could examine on the merits whether the Bank indeed had violated the Complainant's due process rights in this respect.

The Tribunal thus concluded that it would examine the alleged breach of confidentiality only in the context of the Applicant's due process claim. The Tribunal stressed, however, that it was not permitting the Applicant to "tack" separate, old and time-barred claims onto timely claims before the Tribunal.

For such reasons, the Tribunal rejected the Bank's jurisdictional objection.

3. *Decision No. 380 (18 March 2008): Z.* v. *International Bank for Reconstruction and Development*[30]

Termination of employment due to fraud—Necessity to show from the facts and circumstances that the Applicant had the requisite intent—Duty of investigators to seek both inculpatory and exculpatory evidence—Misconduct

The Applicant joined the International Bank for Reconstruction and Development (the Bank) General Services Department (GSD) as a temporary employee in 1998. She received an open-ended appointment in 2001, and in July 2004 she was promoted to the position of Contract Coordinator at Level E. In 2005, a Senior Auditor of the Bank conducted an audit of the Bank Purchasing Card (PCard) usage in GSD. The PCard was designed for payment of business expenses, not for travel or training costs. Business expenses charged to the PCard were paid directly by the Bank through the PCard program, whereas staff member's official travel expenses were paid either with a personal credit card or Bank-issued Diners Club card, and then reimbursed by the Bank through a Statement of Expenses (SOE). The Senior Auditor found two travel-related expenses charged to the Applicant's PCard in 2004 which had been paid by the Bank directly and for which she nevertheless also had submitted SOEs for reimbursement.

The Department of Institutional Integrity (INT) initiated a preliminary inquiry in June 2005, and determined that the Applicant had submitted SOEs for the amount of $333.08 after she had charged them to her PCard. On 19 July 2005, Human Resources sent the Applicant a letter in which it offered her the option to resign with a bar to re-hire, rather than that INT conduct a formal investigation. The Applicant declined that offer, and the INT commenced a formal investigation. On 21 September 2005, the INT presented her with a formal notice of alleged misconduct. On the same day, the Applicant explained in an

[30] Jan Paulsson, President; Stephen M. Schwebel and Francis M. Ssekandi, Judges.

interview that she had mistaken the PCard for her personal visa card, and that she in both instances had believed that she had paid with her personal credit card. The INT submitted its final report to the Vice President of Human Resources on 11 April 2006. In a letter dated 27 June 2006, the Vice President informed the Applicant that her appointment would be terminated, as she willingly had defrauded the Bank. The Applicant challenged that decision on 8 September 2006 before the Appeals Committee, which in its report of 25 April 2007 concluded that the Applicant's claims should be dismissed. The Managing Director of the Bank accepted this recommendation. This is the impugned decision.

The Tribunal recalled United Nation Administrative Tribunal Judgment No. 1244 (2005), and considered that, in deciding whether a staff member is guilty of fraud, a determination of intent must be made, and that it was intent that separates mistake from fraud, the accidental from the purposive. It noted that it was necessary to first determine whether the Bank had properly established that the Applicant had intended to defraud the Bank. On this basis, the Tribunal found that intent to defraud cannot be automatically inferred simply because some documentary evidence contradicts the accused staff member's version of events. A fuller examination of the facts and circumstances of the case must precede a determination about the presence of intent to defraud.

The Tribunal stated that, although it was convinced that the Applicant's conduct constituted misconduct, it had to consider with great care the issue whether the documentary evidence presented by the Bank was so decisive that it must conclude that she had the intent to defraud. Fraud is never presumed. The Tribunal stated that INT had to show from the facts and circumstances of the case that the Applicant had the requisite intent. The Tribunal thus turned to consider whether in determining the question of intent to defraud INT had been diligent in seeking both culpatory and exculpatory evidence in giving them proper weight.

In this regard, the Tribunal considered that the INT Report and the testimony of the Vice President for Human Resources did not suggest a careful examination of the question whether the Applicant's mistakes were so unusual that they compelled findings of knowledge and deliberation. The Tribunal observed that a thorough investigation alert to inculpatory as well as exculpatory factors might have noted this relevant factor and would have given it proper weight.

Furthermore, in considering whether INT failed to give proper weight to some exculpatory factors, the Tribunal opined that the existence of a pattern is an important factor (if not always essential) in determining intent to defraud. An isolated act is more plausibly fraudulent if it concerns substantial amounts. But, even with small amounts, where the staff member persisted in and showed a pattern of abuse, the Respondent is entitled to take a serious view of the staff member's misconduct. In cases where intent to defraud is not so evident, it is relevant to ask whether the acts are repetitive. The Tribunal considered that INT appeared to have given insufficient weight to this exculpatory evidence.

The Tribunal considered that INT should have sought other evidence so as to assess the Applicant's reputation for truth and integrity in transactional dealings in the Bank. The testimony of the Applicant's co-workers, particularly her managers, would have been useful in this respect. In this regard, the Tribunal noted that there must certainly be cases where the documentary evidence is so compelling that interviewing other individuals would be unnecessary, but this case required a determination as to intent to defraud if

mandatory termination was to be justified. Thus, the Tribunal considered that documentary evidence had to be compelling with respect to the Applicant's intent, and did not find the documentary evidence before it decisive to such a degree.

The Tribunal also considered the inability of the Vice President for Human Resources' to satisfactorily distinguish between the facts of the present case and those of a precedent in which it had been decided that the intent to defraud was unsatisfactory.

Considering all the circumstances, the Tribunal ruled that the record did not contain sufficient evidence to conclude that the Applicant had had intent to defraud, and consequently set aside the decision that the Applicant had committed fraud.

For such reasons the Tribunal ordered that the decision to terminate the Applicant's employment be rescinded, but noted that the Bank could, however, impose other disciplinary measures against the Applicant.

4. *Decision No. 384 (18 July 2008) A. A.* v. *International Bank for Reconstruction and Development*[31]

External service of staff to resolve potential conflict of interest—Interpretation of agreement between the Bank and the Applicant—*Contra proferentem* rule not to be applied to the present case—Applicant's secondment to other institutions was clearly and essentially contingent upon the tenure of the Bank's President—Duty of the Bank to establish appropriate safeguards to ensure that confidential personnel information pertaining to a staff member remained confidential

The Applicant joined the International Bank for Reconstruction and Development ("the Bank") in 1997 and was assigned to the Middle East & North Africa Region ("MNA"). After a number of promotions, she served as Acting Manager, External Relations and Outreach, MNA from 2002 to 2005.

In June 2005, a new President joined the Bank. Before assuming his functions, he made disclosure of a personal relationship with the Applicant. This circumstance created a potential conflict of interest under the Bank's rules, and was referred to the Ethics Committee of the Board of Executive Directors. The Ethics Committee decided that the best way to resolve the conflict of interest would be to place the Applicant on external service with pay ("external service"). The Ethics Committee concluded that the potential disruption to the Applicant's career should be taken into account, and raised the possibility of granting her a promotion to level H upon the commencement of her external service, since she would need to withdraw as a candidate for a level H position for which she had applied.

On 1 September 2006, the Applicant and the Vice President of Human Resources signed an agreement defining the terms of her external service. The Applicant was initially assigned to the U.S. Department of State to give effect to her external service. After one month, however, the Chairman of a newly founded foundation (the Foundation) wrote to an advisor to the Bank's President requesting the transfer of the Applicant from the State Department to the Foundation subject to the same arrangement agreed with the State

[31] Mr. Jan Paulsson, President; Mr. Francisco Orrego Vicuña, Ms. Sarah Christie, Mr. Stephen M. Schwebel and Mr. Francis M. Ssekandi, Judges.

Department. In the meantime, the terms of the Applicant's external service were leaked to the media, creating a controversy. In May 2007, the President announced that he would resign effective 30 June 2007.

Following the President's resignation, the Bank wrote to the Applicant explaining that the reasons for her external service had come to an end, and, after consulting the Foundation, informed the Applicant that her external service would end on 31 December 2007. The Applicant presented a claim to the Tribunal on the basis that the Bank had breached the contractual agreement of 1 September 2006, and that it had failed to safeguard her personnel data and protect her reputation, thereby causing her humiliation and harm.

Commencing its analysis of the agreement of 1 September 2006, the Tribunal observed that it had been an unprecedented solution to avoid a conflict of interest stemming from the Applicant's personal relationship with the President of the Bank, and that the external service had been contemplated for a five-year period, with a possibility of a five-year extension. The Tribunal further observed that the text of the agreement had been inadequately drafted. Considering its context and the fact that both parties had more than adequate opportunity to seek advice (and obvious reason to do so given the sensitivity of the matter), the Tribunal decided to not apply the *contra proferentem* rule against the Bank on the grounds that it drafted the agreement. Instead, the Tribunal applied that rule in its at least equally legitimate sense to the effect that ambiguities were resolved, if necessary, against the party seeking to rely on the text.

The Applicant sought to rely on the final paragraph of the agreement, which provided that its "terms and conditions" would endure "regardless of changes in the management or staff at the Bank." The Tribunal was, however, unable to accept her argument that this included also the resignation of the President on 30 June 2007.

The Tribunal noted that the arrangements between the Bank and the Applicant thus created considerable ambiguity. However, considering the terms and the context of the Letter of Agreement and all the circumstances of which it is aware, the Tribunal did not find the termination of external service to be unlawful or unreasonable. Her secondment to other institutions was clearly and essentially contingent upon the tenure of the Bank's President.

The Tribunal rejected the Applicant's claims that she would return to a hostile working environment, and that the Bank had failed to give her a position that would make full use of her professional qualifications.

With regard to the Applicant's argument that the Bank was liable for the action of the staff member who had disclosed her personnel information, the Tribunal emphasized that the Bank must establish and maintain appropriate safeguards to ensure that confidential personnel information pertaining to a staff member remained confidential, and to take reasonable remedial action in the event confidentiality is breached. In the present case, the disclosure of the personnel information was not in any manner approved or condoned by the Bank's management, nor had the Applicant identified safeguards which the management neglected. The Tribunal noted that neither the Applicant nor the Bank could identify the individual who leaked the information. In response to the disclosure, the Bank had examined whether it was possible to identify the source of the leak, and explained that there were at least 88 individuals who, in the normal course of their duties, could have accessed the Applicant's personnel data, but had not been able to single out anyone. The

Bank could, according to the Tribunal, thus not be made liable for its inability to take action against the individual who had disclosed the information.

In conclusion, the Tribunal found no wrongdoing on part of the Bank.

D. Decisions of the Administrative Tribunal of the International Monetary Fund[32]

Judgment No. 2008–1 (January 7, 2008): Mr. M. D'A. (No. 3), Applicant v. *International Monetary Fund, Respondent*

Candidacy for election to the governing board of the Staff Association—Transfer to a different post in same department at the same salary and grade level in case of election—Conflict of interest—Right to association—Alleged intimidation and harassment—Right of the staff to be represented by elected representatives rather than right of each staff member to represent the staff—Recognized discretionary authority to determine on a case-by-case basis the risk of conflict of interest—Abuse of discretionary authority—Requirement to weigh carefully any potential incompatibility between job functions

The Applicant was a staff member who served in the Compensation and Benefits Policy Division of the Human Resources Department (HRD). On 12 January 2006, the Senior Personnel Manager (SPM) of the Human Resources Department circulated to all staff members within the Department an email notification advising that, because they were engaged in advisory and policy work on staffing and organizational issues and/or had access to privileged knowledge and information in these areas, running for election to the Staff Association Committee (SAC) was considered a conflict of interest and consequently not permitted for HRD staff. On the following day, the roster of candidates to the SAC was announced, among which was the Applicant's name. On 17 January 2007, the Division Chief told the Applicant that he was not barred from running for the SAC, but that because in his view the Applicant's functions involved matters that were the subject of consultation between SAC and HRD, his election would pose a conflict of interest. Accordingly, Applicant was informed that in the event that he were elected, he would be reassigned to another position within HRD that would not pose a conflict of interest.

The SAC election took place as scheduled on 25 and 26 January 2006. As the Applicant was not elected, no further action was taken in respect of his candidacy or his job assignment.

With regard to the admissibility of the claim, the Tribunal considered whether the Applicant could be considered to have been "adversely affected" by the administrative action of the Fund, and whether he challenged a "regulatory decision." The Tribunal found

[32] 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/index.htm.

that the Applicant's challenge was not a hypothetical one, nor did the Applicant seek merely an advisory opinion. Rather, he sought damages for a decision that in his view unfairly put him to a choice between his job assignment and the opportunity to serve in a representative role with the Staff Association, a decision that he alleged wrongfully infringed upon his right to association. The Tribunal recalled that a regulatory decision was defined as "any rule concerning the terms and conditions of staff employment, including the General Administrative Orders and the Staff Retirement Plan, but excluding any resolutions adopted by the Board of Governors of the Fund" (Statute, article II, 2.b). The Tribunal found that it did not have to decide on whether the decision was regulatory, as it had already concluded that it had adversely affected the Applicant. The decision was therefore subject to review by the Tribunal.

The Tribunal recalled that the right of staff members to associate for the presentation of their views to Fund management is set out in rule N-14 of the Fund's Rules and Regulations. The Tribunal noted that the Staff Association's "primary purpose is to act as representative of staff (vs. management) interests." (quoting Mr. "V," Applicant *v.* International Monetary Fund, Respondent, IMFAT Judgment No. 1999–2 (August 13, 1999), para. 113.) In the view of the Tribunal, the Rule referred to the right of the staff to be represented by elected representatives rather than to a right of each staff member to represent the staff by serving as a member of the Staff Association's governing board. That interpretation was consistent both with the text of the rule and with the concept underlying the right to association, which looked to the channelling of staff interests through representatives for the mutual benefit of individual staff members and for the orderly presentation of views to the organization.

The Tribunal next addressed the question of whether the Fund had abused its discretion in applying the general principle of avoiding a conflict. The Tribunal cautioned that the significance of the right to association, which underlies the language of rule N-14, required that the Fund weigh carefully any potential incompatibility between job functions and service as a SAC official so as not to restrict unduly the right to association. While it was within management's discretionary authority to transfer staff members, that authority, explained the Tribunal, was subject to review for abuse of discretion, for example, as being improperly motivated or discriminating impermissibly among staff members or, as alleged by the Applicant, for contravening a staff member's right to association. The Tribunal emphasized that whether or not the right to association, which has been given expression in the Fund's internal law through rule N-14, was regarded as a 'fundamental human right,' it was indisputably a right, like the right to non-discrimination, that imposed a substantive limit on the exercise of the Fund's discretionary authority.

After reviewing the jurisprudence of other international administrative tribunals, the Tribunal concluded that the Fund had preserved the staff member's right to serve in a representative capacity by transferring him to a post not presenting a conflict of interest to a SAC official. Any possible adverse consequence to his career was outweighed by the principle of protecting against conflict of interest, an objective that serves both staff and management interests. The Tribunal additionally noted that the Fund had stated that the transfer would have been only for the duration of Applicant's tenure on the SAC and would not have involved any diminution in salary or grade level. The Tribunal concluded that such a practice, in general terms, cannot be said to violate the right to association.

The Tribunal weighed whether the discretion at issue was reasonably exercised in the Applicant's case. The Applicant did not dispute that his job responsibilities in HRD at the time that he sought election to the SAC involved matters relating to the Employment, Compensation and Benefits Review. The prominent role played by the SAC in the consultative process relating to those issues, resulting in revision by the Executive Board of the system of staff compensation, had been recognized in the Tribunal's Judgment in Daseking-Frank *et al.*, Applicants *v.* International Monetary Fund, Respondent, IMFAT Judgment No. 2007–1 (January 24, 2007).

The Tribunal concluded that the Fund had not abused its discretion in taking the said measures in respect of the Applicant, a staff member whose job functions may reasonably be said to have presented a conflict of interest with membership on the governing board of the Staff Association. At the same time, the Tribunal cautioned that in order to protect the right to association embodied in the Fund's internal law, such measures must be supported by evidence and be narrowly tailored to serve the objective of protecting against conflict of interest. The Tribunal was unable to find that the Fund's decision was either improperly motivated or discriminated impermissibly among members of the staff. The Applicant's claims that the Fund's actions had constituted harassment and intimidation were similarly rejected.

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 verbale to the Permanent Representative of a Member State to the United Nations on the question of taxation of salaries and emoluments paid to locally recruited officials of the United Nations system

Privileges and immunities granted to United Nations officials—Convention on the Privileges and Immunities of the United Nations, 1946[2]—General Assembly resolution 78 (1) of 7 December 1946—United Nations officials exempted from taxation on their salaries regardless of their nationality—Equality of treatment for all officials of the Organization to whom such immunity is granted—Only staff recruited locally and assigned to hourly rates may be subject to taxation—Direct assessment imposed on salaries of United Nations officials viewed as comparable to national income taxes—Social security and social insurance fees deemed to constitute taxation

The Legal Counsel of the United Nations . . . has the honour to refer to a question of taxation of salaries and emoluments paid to locally recruited officials of the United Nations system organizations operating in that country and the payment of social insurance fees by such officials.

The Legal Counsel has been informed of a note verbale from the Protocol Department of the Ministry of Foreign Affairs of the [State] No. [. . .], dated 28 January 2008, addressed to all diplomatic missions accredited in the [State]. The Legal Counsel notes that the Ministry requests "all national employees [...] be accredited in the Protocol Department of the Ministry of Foreign Affairs [and] to pay completely and timely all state payments". It continues by stipulating that "[p]ersons acting in diplomatic representations [. . .] denying to pay tax and social insurance fee should be punished".

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* This chapter contains legal opinions and other similar legal memoranda and documents.

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

While it is not clear from the wording of the above-referenced note verbale that it was the Government's intention to include United Nations officials as "staff and employees of diplomatic missions accredited in [State]", the Legal Counsel is informed that the Chief of the Protocol Department of the Ministry of Foreign Affairs confirmed to the Resident Coordinator of the United Nations that the note verbale was intended to apply to United Nations staff members.

In this connection, the Legal Counsel wishes to clarify the relevant provisions of the applicable legal instruments as follows.

Under article II, section 7 (a) of the 1946 Convention on the Privileges and Immunities of the United Nations (the General Convention), to which the [State] is a party without any reservation, "[t]he United Nations, its assets, income and other property shall be exempt from all direct taxes." Furthermore, pursuant to article V, section 18 (1) (b) of the General Convention, "officials of the United Nations shall be exempt from taxation on salaries and emoluments paid to them by the United Nations." The same provision is also included in article VII (1) (b) of the 1992 Agreement between the United Nations and the Government relating to the Establishment of a United Nations Interim Office and article XIII (1) (b) of the 2002 Basic Cooperation Agreement between the United Nations (United Nations Children's Fund) and the Government. In addition, article IX (1) of the 2001 Basic Assistance Agreement between the United Nations (United Nations Development Programme (UNDP)) and the Government confirms the applicability of the General Convention, *inter alia*, to UNDP officials.

It should be noted in this regard that the General Assembly in its resolution 76 (I) of 7 December 1946 approved "the granting of privileges and immunities referred to in article V . . . to all members of the staff of the United Nations, with the exception of those who are recruited locally *and* are assigned to hourly rates" (emphasis added). Therefore, all staff members of the United Nations, regardless of nationality, residence, place of recruitment or rank, are considered officials with the exception of those who are *both* recruited locally *and* assigned to hourly rates. This exception, therefore, only applies to individuals who meet *both* criteria. This is reflected in article I (g) of the 1992 Agreement which stipulates that "Officials of the Office" means "all members of its staff, irrespective of nationality, employed under the Staff Rules and Regulations of the United Nations with the exception of those who are recruited locally *and* assigned to hourly rates as provided for in General Assembly resolution 76 (I) of 7 December 1946" (emphasis added). Accordingly, locally recruited staff members who are not assigned to hourly rates are entitled to exemption from taxation.

In addition, the Legal Counsel wishes to highlight that the bilateral Agreements referred to above deal with the privileges and immunities of all officials, including locally recruited officials, separately from those accorded to "persons recruited locally and assigned to hourly rates". The latter only enjoy immunity from legal process in respect of words spoken or written and any act performed by these individuals in their official capacity.

As a party to the General Convention, the [State] is not entitled to make use of United Nations salaries and emoluments for any tax purposes. In place of national taxation, and to avoid the double taxation of United Nations officials, the General Assembly, in 1948, adopted a Staff Assessment Plan designed "to impose a direct assessment on

United Nations staff members which is comparable to national income taxes" (General Assembly resolution 239 (III) A of 18 November 1948). The total funds collected from this assessment are distributed among Member States, including the [State], in proportion to their contributions to the assessed budget of the United Nations. National taxation would, therefore, impose a double taxation burden on officials of the United Nations and would increase the financial burden of the Organization and its Member States.

Another rationale of the immunity from taxation of salaries and emoluments paid by the United Nations is to achieve equality of treatment for all officials of the Organization and that no Member States should derive any national financial advantage from the presence on its territory of staff of international organizations who receive salaries and emoluments from the funds of these organizations. These principles were clearly enunciated by the General Assembly in resolution 78 (I) of 7 December 1946 as follows: "In order to achieve full application of the principles of equality among Members and equality among personnel of the United Nations, Members which have not yet completely exempted from taxation, salaries and allowances paid out of the budget of the Organization are requested to take early action in that matter."

With regard to the payment of social security and social insurance fees, the United Nations has consistently taken the view that the Organization and its officials are exempt from such payments as they constitute taxation within section 18 (b) of the General Convention. The Legal Counsel wishes to reiterate that all officials of the Organization receive medical insurance and disability coverage and that a United Nations Joint Staff Pension Fund has been established to which the Organization and its officials contribute.

With regard to informing the Ministry of the names of United Nations officials, the Legal Counsel recalls that pursuant to article XVI of the 1992 Agreement, article II (4) (b) of the 2001 Standard Basic Assistance Agreement and article V (2) of the 2002 Basic Cooperation Agreement, the United Nations notifies the names and categories of its officials, experts on mission and persons performing services and any changes in their status to the Ministry of Foreign Affairs.

Finally, under section 34 of the General Convention, the [State] has an obligation to be "in a position under its own law to give effect to the terms of this Convention". Moreover, any interpretation of the provisions of the General Convention must be carried out within the spirit of the underlying principles of the Charter of the United Nations, and in particular, paragraph 1, Article 105 thereof, which provides that the Organization shall enjoy such privileges and immunities as are necessary for the fulfilment of its purposes. Measures which might increase the financial or other burdens of the Organization have to be viewed as being inconsistent with this provision.

The Legal Counsel respectfully requests the competent authorities of [State] to take the necessary steps to resolve this matter expeditiously in order to ensure full compliance with the obligations of the Government under the applicable legal instruments.

27 February 2008

(*b*) Note to the Department of Peacekeeping Operations regarding criminal proceedings in relation to violent protest by former individual contractors of a United Nations Mission

CONVENTION ON THE SAFETY OF UNITED NATIONS AND ASSOCIATED PERSONNEL, 1994[*] — CONVENTION ON THE PRIVILEGES AND IMMUNITIES OF THE UNITED NATIONS, 1946[**] —WAIVER OF IMMUNITY FOR UNITED NATIONS MISSION PERSONNEL TO ALLOW THEIR TESTIMONY IN CRIMINAL PROCEEDINGS IN A NATIONAL COURT—SECRETARY-GENERAL'S RIGHT AND DUTY TO WAIVE IMMUNITY IN CASES WHERE IMMUNITY WOULD IMPEDE THE COURSE OF JUSTICE—EVIDENCE OR TESTIMONY SHOULD NOT PREJUDICE THE INTERESTS OF THE UNITED NATIONS—CRITERIA TO CONSIDER IN DETERMINING IF THE INTERESTS OF THE UNITED NATIONS WOULD BE PREJUDICED—DISCLOSURE OF INTERNAL UNITED NATIONS DOCUMENTS/MATERIALS

1. This refers to your note dated . . . concerning the request of the [Mission] for guidance on the extent of its co-operation with the [State] National Police and the prosecution in connection with charges that have been brought against 16 former [Mission] individual contractors following the incident on [date], when [the Mission] transport personnel were violently attacked and suffered injuries as well as property losses, and when [the Mission] vehicles and other property were also damaged or lost. We note that following the incident, 16 former individual contractors have been charged with "arson, criminal mischief and aggravated assault", and are due to be tried at an unspecified date.

2. We recall that this matter was initially brought to the attention of the Office of Legal Affairs (OLA) by the note of [the Assistant Secretary-General for Peacekeeping Operations] of [date] and that, following our request sent by email on [date], the [Mission] provided, on [date], more details with respect to the case, including, in particular, the names, type and functional positions of [the Mission] personnel who may be required to testify in the criminal proceedings, as well as the nature of the evidence they would provide.

3. The [Mission] has provided a list of eleven members of [the Mission], comprising nine United Nations staff members, one United Nations volunteer and one consultant who would testify as prosecution witnesses during the trial. We also note that a twelfth [Mission] member – from the [State 2] military contingent – may be called to testify but has yet to be identified. We further note that the evidence to be given by the [Mission] witnesses will include confirmation concerning the ownership of the vehicles and other property damaged or lost, confirmation concerning bodily injuries sustained, identification of the attackers, and eye witness accounts of how the attacks occurred.

4. The [Mission] has also provided a copy of a note verbale that it sent to the [State] authorities reporting the attack and asking them to prosecute the offenders in accordance with the "Agreement between [State] and the United Nations concerning the Status of the United Nations Mission in [State]", dated [. . .], (the SOFA) and consistent with the 1994 Convention on the Safety of United Nations and Associated Personnel, as referred to in the SOFA.

5. Pursuant to the SOFA, the members of the [Mission] who might be called upon to testify in the trial of the 16 suspects in this case enjoy privileges and immunities, and are,

[*] United Nations, *Treaty Series*, vol. 2051, p. 363.

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

in particular, "immune from legal process in respect of words spoken or written and all acts performed by them in their official capacity" (SOFA, paragraph 50). However, under article V, section 20 of the Convention on the Privileges and Immunities of the United Nations of 13 February 1946, to which [State] acceded on [date], "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 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'". Moreover, "the United Nations shall cooperate 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." (Article V, section 21 of the Convention; see also article VI, section 23, applicable to the [Mission] consultant as an expert on mission).

6. In this case, [the Mission] has determined that the prosecution of the suspects is necessary, and that it may deter other similar attacks on the Mission's personnel and property. Accordingly [the Mission] proposes to voluntarily make available the 11 and possibly 12 of its members as witnesses. Here, where the United Nations itself has called for the prosecution of the accused persons, and a successful prosecution may depend on the United Nations allowing its personnel to provide evidence, the Organization should be willing to lift the immunity of such personnel to enable them to testify, as appropriate. In considering whether a request for a waiver should be granted, and if so, whether any conditions should be applied to the waiver, the Secretary-General considers whether the evidence or testimony to be provided by the witness would prejudice the interests of the United Nations; specifically whether such evidence or testimony would: (i) endanger the safety or security of current or former personnel of the United Nations or otherwise prejudice the security or proper conduct of any operation or activity of the United Nations; (ii) violate a duty of confidentiality which the United Nations owes to a third party; or (iii) compromise the confidentiality which is necessary for the effective operation of the internal decision-making processes of the United Nations, or of future United Nations peacekeeping operations.

7. While OLA is unaware of any consideration that would be prejudicial to the interests of the United Nations if the immunity of the [Mission] personnel in this case were waived to allow them to give evidence in the trial of the 16 accused persons, it is for the Department of Peacekeeping Operations and [the Mission] to consider the criteria indicated above. Assuming that your Department and [the Mission] see no impediment based on those criteria, the immunity of the following 11 members of [the Mission], as identified by [the Mission], is hereby waived by the Secretary-General solely for the purpose of their appearance as witnesses for the prosecution before the [State] court in connection with the above mentioned case: [11 names and respective positions]. While, in principle, the immunity of the twelfth possible witness could be waived, we have not addressed the issue since such witness has not been specifically identified.

8. We note that [the Mission] proposes to disclose the following [Mission] documents and materials to the court in support of the prosecution: Special Investigations Unit report; video footage of attack from [Mission] security cameras; damage discrepancy reports for [Mission] vehicles No. 638, 790 and 2143; medical reports of injured [Mission]

personnel; and [Mission] asset tracking documents. It appears to us that all these documents/materials are internal United Nations documents/materials which should normally not be disclosed to persons outside the Organization. However, we assume that the Department of Peacekeeping Operations sees no policy or operational considerations that based on the above-mentioned criteria would prevent or limit the disclosure of such documents. On that understanding, we suggest that such documents/materials be voluntarily disclosed to the court exclusively for the purpose of the trial of the 16 accused persons, but without prejudice to the privileges and immunities of the United Nations and the inviolability of its archives.

12 May 2008

(*c*) Note verbale to the Permanent Representative of a Member State to the United Nations regarding a civil suit instituted in the Conciliation and Arbitration Board

Convention on the Privileges and Immunities of the United Nations, 1946* — Privileges and immunities of United Nations officials for words spoken or written and acts performed in their official capacity—Immunity from every form of legal process except in cases where the Secretary-General waives the immunity—Waiver of immunity must be express—No waiver of immunity shall extend to any measure of execution—Responsibility of the Secretary-General to assess whether officials acted within the scope of their functions

The Legal Counsel of the United Nations . . . has the honour to refer to the civil suit instituted in the Conciliation and Arbitration Board, by [Name A] (File No. . . .) against [Names B, C and D], the United Nations, the United Nations Development Programme (UNDP), the United Nations Population Fund (UNFPA) and the Country Support Team of the United Nations Development Fund for [region]. In this regard, the Legal Counsel has the honour to inform the Permanent Representative that [Name B] is the Director of the [regional] Division at UNFPA Headquarters in New York and [Name C] is the Officer-in-Charge of the UNFPA Country Support Team in [State]. They are both officials of the United Nations. [Name D] is the former Director of the UNFPA Country Support Team in [State] and she is a former official of the United Nations.

The Legal Counsel wishes to recall that both UNDP and UNFPA are an integral part of the United Nations. Thus, UNDP and UNFPA, as well as its officials, enjoy the privileges and immunities provided for in the Convention on the Privileges and Immunities of the United Nations (hereinafter referred to as the General Convention) adopted by the General Assembly of the United Nations on 13 February 1946, to which [State] has been a party since [date]. Pursuant to article II, section 2 of the General Convention, "[t]he United Nations, its property and assets wherever located and by whomsoever held, shall enjoy immunity from every form of legal process except insofar as in any particular case, it has expressly waived its immunity. It is, however, understood that no waiver of immunity shall extend to any measure of execution".

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

Under article II, section 2 of the General Convention, waiver of immunity by the United Nations must be express. The United Nations, including UNDP and UNFPA, has not waived its privileges and immunities in this case.

Pursuant to article V, section 18 (a) of the General Convention, officials of the United Nations, including UNFPA officials, shall "be immune from legal process in respect of words spoken or written and all acts performed by them in their official capacity". Thus, [Names B, C and D] enjoy immunity from legal process in the present case as it relates to work performed in the course of their official functions.

[Name A] is not devoid of a remedy to address her labour-related grievances. The Organization's position in these types of employment cases is for it to maintain its immunity while offering alternative means of dispute settlement in accordance with of the General Convention. In this respect, [Name A's] contract of employment with UNDP and subsequently with UNFPA set out the means of dispute settlement.

In accordance with article II, section 2, and article V, section 18 (a) of the Convention, the Legal Counsel hereby returns the notification of the lawsuit instituted by [Name A]. The Legal Counsel is confident that the competent [State] authorities will ensure full respect of its privileges and immunities in accordance with the obligations of [State] under international law.

The Legal Counsel also wishes to recall that the International Court of Justice confirmed in its Advisory Opinion on the difference relating to immunity from legal process of a Special Rapporteur on Human Rights of 29 April 1999 (the so-called "Cumaraswamy case")[*] that "the Secretary-General, as the chief administrative officer of the Organization, has the primary responsibility to safeguard the interests of the Organization; to that end, it is up to him to assess whether its agents acted within the scope of their functions and, where he so concludes, to protect these agents, including experts on mission, by asserting their immunity. This means that the Secretary-General has the authority and responsibility to inform the Government of a Member State of his finding and, where appropriate, to request it to act accordingly and, in particular, to request it to bring his finding to the knowledge of the local courts if acts of an agent have given or may give rise to court proceedings."

The Court further opined that "[w]hen national courts are seized of a case in which the immunity of a United Nations agent is in issue, they should immediately be notified of any finding by the Secretary-General concerning that finding".

The Court also stated that "[a]ccording to a well-established rule of international law, the conduct of any organ of a State [whether that organ belongs to the constituent, legislative, executive, judicial or other power, whether its functions are of an international or an internal character, and whether it holds a superior or a subordinated position in the organization of the State] must be regarded as an act of that State."

Pursuant to section 34 of the General Convention, the Government of [State] undertook an obligation to be "in a position under its own law to give effect to the terms of this Convention". Moreover, any interpretation of the provisions of the General Convention [must] be carried out within the spirit of the underlying principles of the Charter of the

[*] *Difference Relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights, Advisory Opinion, I.C.J. Reports 1999*, p. 62.

United Nations, and in particular Article 105 (1) thereof, which provides that "[t]he Organization shall enjoy in the territory of each of its Members such privileges and immunities as are necessary for the fulfilment of its purposes".

For the foregoing reasons the Legal Counsel respectfully requests the Government of [State] to promptly take all necessary steps to ensure full respect for the privileges and immunities of the United Nations, including UNDP and UNFPA, and its officials, in accordance with its obligations under international law.

23 May 2008

(*d*) Interoffice memorandum to the Secretary to the Commission and Officer-in-Charge of the General Services Section, Economic Commission for Africa (ECA), regarding new Directive on Value Added Tax in Member State

THE UNITED NATIONS IS NOT EXEMPT FROM THE PAYMENT OF VALUE ADDED TAX (VAT) UNDER THE CONVENTION ON THE PRIVILEGES AND IMMUNITIES OF THE UNITED NATIONS, 1946[*] — ENTITLEMENT TO "RETURN" OR "REMISSION" OF VAT—IN ACCORDANCE WITH ARTICLE 105 OF THE CHARTER OF THE UNITED NATIONS, THE ORGANIZATIONS SHALL ENJOY SUCH PRIVILEGES AND IMMUNITIES AS ARE NECESSARY FOR THE FULFILMENT OF ITS PURPOSES—MEASURES WHICH IMPOSE FINANCIAL OR OTHER BURDENS ON THE ORGANIZATION MAY BE INCONSISTENT WITH THAT REQUIREMENT—NOT POSSIBLE UNDER RELEVANT RULES AND REGULATIONS OF THE ORGANIZATION TO PROVIDE ORIGINAL RECEIPTS AS SUPPORTING DOCUMENTS

1. This is with reference to your memorandum of 28 June 2008 to the Legal Counsel by which you have sought our advice on the new Directive No. [. . .] of [date] issued by the Government of [State] on the procedure for reimbursement of Value Added Tax (VAT) for goods and services paid by "Organizations enjoying Special Privileges". This includes the United Nations. We understand that the Directive went into effect as of [date]. We further understand from the discussions you have had with this Office that negotiations are ongoing with the Government.

2. We note that until now the United Nations was exempt from VAT in [State]. Thus, the implementation of the new Directive would have a serious impact on the budget of all United Nations agencies operating in [State]. Furthermore, the documentation process and modalities of implementation impose deadlines and requirements which the Organization may not be able to meet, such as the requirement to submit claims within a month and the requirement to submit original receipts. You have also raised other implications that the new Directive will have.

3. We suggest that ECA, along with all the United Nations agencies operating in [State], continue its discussions on a practical resolution of the matter. ECA may wish to highlight to the Government that the Organization has been operating in [State] for over fifty years and has thus far enjoyed exemption from the payment of VAT, which we would prefer to continue to be applied to the United Nations. Furthermore, ECA may also wish to inform the Government that a number of host countries have exempted the United Nations from the payment of VAT.

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

4. However, as VAT is an indirect tax, in accordance with article II, section 8 of the 1946 Convention on the Privileges and Immunities of the United Nations, the Organization is only entitled to "return" or "remission" of the amount paid. In this regard, the Agreement between the United Nations and [State] and the Basic Agreement between the United Nations (UNDP) and [State] do not touch upon this issue. However, we note that article VII, paragraph 6 of the 1994 Basic Cooperation Agreement between the United Nations (UNICEF) and [State] (copy attached)* provides that no "value added tax . . . shall be levied on the supplies, equipment and other materials intended for programmes of cooperation in accordance with the master plan of operations". For other supplies and equipment purchased locally, however, the Government's only obligation is for return or remission of the tax paid.

5. Accordingly, with the exception of goods which are purchased by UNICEF in accordance with the master plan of operations, the Organization does not have a right to be exempt from the payment of VAT. However, you may also wish to highlight that paragraph 1, Article 105 of the Charter of the United Nations provides that the Organization shall enjoy such privileges and immunities as are necessary for the fulfilment of its purposes. Measures which might increase the financial or other burdens of the Organization are to be viewed as being inconsistent with this provision. In this regard, the Report of the Committee on the San Francisco Conference responsible for the drafting of Article 105 of the Charter unequivocally pointed out that "if there is one principle certain it is that no Member State may hinder in any way the working of the Organization or take any measure the effect of which might be to increase its burdens financial or otherwise".

6. In terms of the procedures outlined in the new Directive, we note that there are a number of issues of concern. The first pertains to the requirement to fill out a tax fund application on a monthly basis for all purchases made during that month. ECA may wish to highlight the administrative burden of the new requirement and engage in discussions on administrative procedures which the Organization could agree to.

7. We further note that paragraph 4.5 of the new Directive provides that "[e]ach supporting document evidencing payment of tax . . . [is] required to . . . indicate the date on which it was prepared and issued in accordance with the requirements of the relevant tax law". It is not clear whether a new requirement is being added by referring to the "requirements of the relevant tax law". This should be clarified as the Organization should not directly be subject to the tax law of [State] and all requirements of the Organization should be clear from the arrangements agreed upon with the Government.

8. There appears to be a special procedure for tax refund claims related to construction work (paragraph 4.7). As there is a requirement to submit a letter from the Ministry of Finance and Economic Development authorizing the construction work, ECA may wish to request exemption from this requirement as the Organization's principal counterpart is the Ministry of Foreign Affairs.

9. The most worrisome provision in the new Directive is the requirement to submit original receipts as supporting documents (paragraph 4.6). Kindly inform the Government that it is not possible under the relevant rules and regulations of the Organization to provide the originals, and discuss other ways of providing supporting documents.

24 July 2008

* Not reproduced herein.

(*e*) Interoffice memorandum to the Chief of the Field Procurement Service regarding Member State export controls on orders of communication technology products for use by United Nations Mission in the Sudan

EXPORT LICENCE FOR TECHNICAL AND COMMUNICATIONS EQUIPMENT TO BE EXPORTED FOR USE BY A UNITED NATIONS MISSION—CONVENTION ON THE PRIVILEGES AND IMMUNITIES OF THE UNITED NATIONS, 1946* —THE ORGANIZATION SHALL BE EXEMPT FROM CUSTOMS DUTIES AND PROHIBITIONS AND RESTRICTIONS ON IMPORTS AND EXPORTS IN RESPECT OF ARTICLES FOR OFFICIAL USE—IN PRACTICE, THE UNITED NATIONS ASKS VENDORS TO OBTAIN RELEVANT LICENCES FROM RELEVANT AUTHORITIES—ONLY WHEN SUCH LICENCES ARE DENIED, OR WHEN THEY ARE SUBJECTED TO RESTRICTIONS WHICH IMPINGE ON THE ORGANIZATION'S ABILITY TO CARRY OUT ITS ACTIVITIES, WOULD THE MEMBER STATE BE CONSIDERED TO HAVE FAILED TO COMPLY WITH THE CONVENTION—REQUIREMENT TO MAINTAIN INVENTORY CONTROLS AND TO REPORT TO GOVERNMENT ANY LOSS OR THEFT OF EQUIPMENT SUBJECT TO LICENCE

1. This responds to your memoranda, dated 16 May 2008 and 26 June 2008, addressed to this Office, seeking advice in connection with the above-referenced matter, and is further to the various discussions and exchanges of e-mail between our offices on this matter.

2. In the memorandum, dated 16 May 2008, you requested advice concerning a rider that the [State] [Department], proposed the United Nations to countersign for the export of [company] communications equipment that the Organization was purchasing for its missions in the Sudan. The rider was proposed by the [Department] as an addendum to the export license that [company] was requesting from the [State] Government, in accordance with the terms of the United Nation's contract with [company], in order to export such equipment for consignment to the United Nations for its official use in its missions in the Sudan. You expressed concerns that the proposed rider contained stricter terms than others that the [State] Government had previously proposed. In particular, you noted that the Procurement Division (PD) was of the view that provisions of the proposed rider requiring the Organization to maintain inventory controls over the items subject to the license and to provide reports to the [State] Government concerning lost or stolen items were too invasive and restrictive of the Organization's rights under the 1946 Convention on the Privileges and Immunities of the United Nations (General Convention) to export items for its official use without restrictions. You indicated that PD attempts to resolve the matter directly with officials of the [Department] had been unsuccessful and that, consequently, several orders for urgently needed [company] equipment had been placed on hold. Accordingly, you requested this Office to bring this matter to the attention of the [State] Government.

3. In your memorandum of 26 June 2008, you informed this Office that the proposed restrictions set forth in the rider were now also being proposed, not only for shipments of [company] communications equipment, but also for shipments of information technology products from [company 2] and shipments of other telecommunications products from [company 3] for the official use of the Organization in its missions in the Sudan. You noted that such proposed restrictions for the export of such products for the Organization's offi-

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

cial use were having an adverse impact on the United Nations' operations in the Sudan, and you requested that this Office assist in finding a timely resolution of this matter.

4. Article II, section 7 (b), of the 1946 General Convention to which [State] became a party in [year] [treaty references] provides, in pertinent part, that the "United Nations, its assets, income and other property shall be exempt from customs duties and prohibitions and restrictions on imports and exports in respect of articles imported or exported by the United Nations for its official use." In practice, in cases in which the Member States seek to monitor the Organization's importation or export of items, including those incorporating sensitive technologies, intended for the official use of the United Nations through import or export licenses, the Organization has asked vendors to obtain such licenses from the relevant authorities of the Member States. Only in cases in which such license for the importation or export of items intended for the official use of the Organization was denied, or in cases in which the licenses were subject to restrictions impinging on the Organization's ability to carry out its activities, would the Organization consider that the relevant Member State had failed to accord the applicable exemption provided for under article II, section 7 (b) of the Convention.

5. The question, therefore, is whether the requirements set forth in the riders that have been proposed by the [Department] to be appended to export licenses for communications and information technology products required by the Organization amount to restrictions on the export from the [State] and the importation of such items into the Sudan for the official use of the Organization. As this Office understands, United Nations missions routinely maintain property control procedures for telecommunications and information technology equipment. What is at issue, therefore, are the provisions of the proposed rider requiring the Organization to report lost or stolen equipment subject to the license to the [State] Government within specific timeframes following loss or theft. It is further noted that the [Department] has made clear to PD and informally to this Office that it will not change its position that the United Nations must countersign the proposed rider and further has asserted that, if the Organization disagreed with the position of the [Department] in this regard, the matter would have to be taken up by the United Nations with the [State's foreign ministry].

6. You have indicated that the operations of the United Nations in the Sudan cannot await such a resolution of this matter. Assuming that it is not possible for PD to find an alternative source to obtain comparable communications and information technology equipment that would not be subject to [State] Government export controls, and in view of the operational exigencies for obtaining the equipment in the Sudan without delay, it would seem that PD has no choice but to proceed with the procurement actions, including countersigning the riders proposed by the [Department] to the export licenses that the vendors will procure from the [State] Government. However, we further recommend that, when countersigning such riders, the appropriate officials of PD include the following statement:

> "Subject to and without any waiver of the privileges and immunities of the United Nations and its officials pursuant to the Convention on the Privileges and Immunities of the United Nations, to which the [State] became a party in [year] [treaty references]."

Copies of such licenses and accompanying riders should be provided to this Office so that appropriate follow-up can be made to the [State] Government, through the [Per-

manent Mission of State to the United Nations], and in the meantime, this Office intends to seek a resolution of this matter with the [State] Government, through the [Permanent Mission of State to the United Nations]. Moreover, should any such license for the export of the subject equipment to the Sudan for the Organization's official purposes be denied, this Office should be informed so that the matter can be brought to the attention of the [State] Government, through the [Permanent Mission of State to the United Nations].

7. In addition to the foregoing, the relevant departments and missions should maintain appropriate inventory control procedures for the equipment subject to such licenses and accompanying riders in accordance with established United Nations regulations, rules and operational policies and procedures. Any losses or thefts of such equipment should be duly recorded and records should be maintained, which records would be subject to the audit procedures of the Organization.

6 August 2008

(*f*) Interoffice memorandum to the Director of the Accounts Division, Office of Programme Planning, Budget and Accounts (OPPBA), regarding the obligation to pay gross receipt tax charged by energy supplier companies

Obligation of the United Nations to pay gross receipt tax (GRT) on energy services— Itemization of GRT in invoices by energy suppliers—GRT is not a direct tax from which the Organization is exempt—Entitlement to seek remission or return from relevant authorities under the Convention on the Privileges and Immunities of the United Nations, 1946[*]

1. I refer to the e-mail message, dated 18 July 2008, from the Chief, Payroll and Disbursement Section, Accounts Division, OPPBA, addressed to you, a copy of which was provided to this Office. That e-mail message, a copy of which is enclosed for your ease of reference,[**] responded to follow-up inquiries made by this Office in connection with our earlier advice and correspondence concerning the above-referenced matter.

(i) Background

2. By its memorandum, dated 29 November 2007, Facilities Management Service (FMS) sought advice from the Office of Legal Affairs (OLA) regarding the United Nations' obligation to pay a "gross receipt tax" ("GRT") as part of payments against invoices for electrical power provided by energy supplier companies, in particular [company 1]. By its memorandum, dated 13 December 2007, addressed to the Chief, Accounts Payable Unit, OLA requested information regarding the total amount of GRT charges that may have been paid to date by the Organization to energy supplier companies, including [company 1]. Subsequently, OLA was informed that the GRT charges have been deducted by the Payroll and Disbursement Section from payments against recent invoices submitted by [company 1] and [company 2], resulting in a protest by [company 1] and an electricity disconnection notice from [company 2] because of underpayment by the Organization in respect of the amounts set forth in such invoices. We note that [company 2] provides

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

[**] Not reproduced herein.

electricity for the Secretary-General's residence . . . , while [company 1] supplies electricity to the United Nations Headquarters (UNHQ) premises.

3. As the Chief, Payroll and Disbursement Service, noted in the e-mail message of 18 July 2008, the Director, General Legal Division, OLA, advised, in a memorandum dated 28 November 2000 (copy enclosed),* that the GRT was an indirect tax from which the Organization was not exempt, but that nevertheless the Organization was entitled to seek the remission or return of the amount of duty or tax from the competent United States tax authorities when making important purchases of goods and services pursuant to Article II, Section 8, of the 1946 Convention on the Privileges and Immunities of the United Nations.** The memorandum concluded that OLA would attempt to initiate a procedure with the United States Government for the remission or return of the amount of GRT charged, and that pending the negotiation of such a procedure, the United Nations should continue to pay the GRT charges.

(ii) Discussion with the United States Mission

4. Following the recent request from FMS for assistance, OLA wrote to the United States Mission on 11 February 2008, seeking the agreement of the United States Government to provide a remission or reimbursement of GRT paid by the Organization to the energy suppliers. In that communication, OLA advised the United States Mission that the amount of GRT for which such remission or reimbursement was being sought totalled US$ 254,744.07, a figure that had been provided to OLA by FMS. However, based on subsequent communications from DM, it was clarified that this amount only refers to the GRT paid to [company 3], a former energy supplier company to the United Nations, over a period of four years, and does not include-payments made to [company 2], [company 1], or any other energy supplier company. Moreover, it is unclear whether the amount sought for remission or reimbursement of the GRT charges covers all United Nations premises in New York. The total amount of GRT paid by the Organization over the years, therefore, might be much higher.

5. In response to the request made by this Office, the United States Mission has asked: (i) whether the GRT is separately itemized on the energy suppliers invoices; (ii) how long the Organization has been paying such GRT charges and for what period the request for remission or reimbursement of the GRT charges relates; and (iii) whether any of the Permanent Missions of other Member States were also paying such GRT charges in respect of their energy suppliers invoices.

a. Itemization of GRT in invoices

6. In response to inquiries made by this Office in order to obtain answers to the first question raised by the United States Mission, in the e-mail message of 18 July 2008, the Chief, Payroll and Disbursement Section stated that FMS had determined that [company 2] has not been separately itemizing GRT charges in its invoices in a manner that would enable the Organization to readily determine the amount of the charges, but that [company 1] has been separately itemizing the charges. Energy suppliers to the United Nations should

* Not reproduced herein.

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

therefore all be requested to itemize the GRT charges in their future invoices in order to keep exact records of such charges. In the meantime, subject to receiving further clarifications from DM, we will inform the United States Mission that only [company 1] has been itemizing GRT charges.

b. Assessment of amount of GRT paid by the United Nations over time

7. Regarding the second question of the United States Mission, I note that in a letter, dated 30 August 2000 to FMS, [company 2] informed the Organization that the GRT charges were included in its invoices for many years but never displayed. OLA had previously requested OPPBA and FMS to review their files and to assess the total amount of GRT charges paid by the Organization. We understand from communications from FMS and the Payroll and Disbursement Section that they do not know when the United Nations was first charged the GRT, and that since financial records are only kept for a finite period, it may not be possible to find out from such records exactly how much GRT has been paid over time. FMS, therefore, proposed to review the available documentation and make some calculations of the total amount paid.

8. I further understand that, in order to complete its calculation of GRT charges paid, FMS may have to determine which GRT rates were applicable to which particular periods when invoices were paid, since the rate of GRT may have fluctuated over time, or may vary depending on the source of energy, *i.e.,* electricity or steam. As this matter involves the review of the relevant invoices, DM may wish to directly contact the energy supplier companies to the United Nations in order to request further information regarding the applicable rates for determining GRT and to request them to provide copies of relevant invoices, if they have not been retained by DM.

9. Based on the foregoing, this Office suggests that DM calculate the total amount of the claim for the remission or reimbursement of GRT charges previously paid, to the best of DM's knowledge, based on its records and any further information that it can obtain from the relevant energy providers, and that DM communicate such information to this Office.

10. Accordingly, apart from the first question raised by the United States Mission concerning separate itemization of GRT charges on invoices from the energy suppliers, the information provided to this Office has not answered the other two questions that the United States Mission has raised. Namely, it is still not clear for what length of time GRT charges have been paid and to what period the request for remission or reimbursement of the GRT charges relates. This information will be crucial for the further discussions with the United States Mission regarding the total amount claimed by the Organization for remission or reimbursement of GRT charges.

11. I also understand that the Organization does not have direct contracts with its energy supplier companies such as [company 2] and [company 1], but rather is relying on contractual arrangements between the United States General Services Administration and the energy supplier companies covering the delivery of electricity and steam to public entities. We would appreciate receiving further information on this arrangement, as this issue may come up during the course of the discussions with the United States Mission.

c. Payment of GRT by Permanent Missions

12. Regarding the third question of the United States Mission, it remains unclear whether any of the Permanent Missions of Member States have also been paying such GRT charges in respect of their energy suppliers invoices. However, because this issue concerns the bilateral relationships between the United States Government and the affected Members States, we will convey to the United States Mission that it is in a better position than the United Nations to determine if there has been any remission or reimbursement of GRT charges by the United States Government to Permanent Missions of Member States.

(iii) Conclusion

13. Given the fact that the GRT is not a direct tax from which the Organization is exempt, in light of the electricity disconnection notice given in respect of the Secretary-General's premises, and in view of the essential nature of the services being provided by energy supplier companies and the information available to this Office, this Office reaffirms its previous advice (see para. 3 above) that the United Nations should pay the GRT charges, including any outstanding amount withheld from prior payments to the energy suppliers in respect of the GRT charges, pending the resolution with the United States Government of the Organization's request for remission or reimbursement of such GRT charges. We will therefore continue our dialogue with the United States Mission on this matter and report any further developments to you.

4 September 2008

(*g*) Interoffice memorandum to the Director of the Programme Planning and Budget Division, Office of Programme Planning, Budget and Accounts (OPPBA), regarding the Lease Agreement between the United Nations and a Member State

Lease Agreement concerning lease of land—Entry into force of Lease Agreement—Exemption under the Agreement from any taxes, including value added tax (VAT), in connection with the land subject of the lease, and the premises and any improvements to be erected thereon—Exemption from any taxes, including VAT, in respect of any materials, equipment, supplies and other goods and services required for the construction of premises or other improvements—Effect of Directive issued by the Government concerning procedures for remission and reimbursement of indirect taxes on the terms of Lease Agreement

1. I refer to the e-mail message, dated 4 September 2008, addressed to this Office by the Office of Central Support Services, copy enclosed,[*] and concerning the above-referenced matter. As stated in that e-mail message, the Advisory Committee [on Administrative and Budgetary Questions (ACABQ)] seeks the advice of this Office with respect to three questions concerning the Lease Agreement between the United Nations and [State] concerning the leasing of land in [city]. According to the e-mail message, the Advisory Committee has raised the three questions in connection with the payment of value added

[*] Not reproduced herein.

tax (VAT) under the Lease Agreement. The questions raised by the Advisory Committee and the responses of this Office thereto are set forth below.

Status of the Lease Agreement

2. The Advisory Committee first seeks clarification as to whether the Lease Agreement is in force. The Lease Agreement entered into force on 24 January 2007, in accordance with Article XIV of the Agreement, when both parties signed and sealed the Agreement. The term of the lease is 99 years, commencing on 22 June 2005, until 21 June 2104.

Payment of VAT under the Lease Agreement

3. The Advisory Committee secondly seeks an interpretation from this Office as to whether the Organization must pay VAT upfront under the Lease Agreement and then seek remission of such VAT from the Government of [State] later. Article II, paragraph 1, of the Lease Agreement provides that the lease of the additional land is for the consideration of the payment by the United Nations of one [State currency] and "free of any other rent, charges, taxes, levies or other imposts . . . ." Article II, paragraph 5, of the Lease Agreement also states that, "[t]he land and the premises shall be exempt from any and all charges, levies, taxes and other imposts with the exception of charges for specific services rendered." In addition, Article XII, paragraph (a), of the Lease Agreement stipulates that all materials, equipment, supplies and other goods and services necessary for the purposes of, or relating to, the construction of the premises are exempt from all taxation imposed by the Government.

4. Based on the foregoing, the Lease Agreement fully exempts the Organization from the payment of any taxes, including VAT, in connection with the land that is the subject of the lease, the premises and any improvements to be erected thereon. In addition, the Lease Agreement exempts the Organization from any taxes, including VAT, in respect of any materials, equipment, supplies and other goods and services that are required for the construction of such premises or other improvements. Accordingly, because the Organization is exempt from such taxes, including VAT, the United Nations should not make upfront payments of any such taxes, including VAT.

Effect of the Government of [State]'s edict on VAT and remission thereof

5. The Advisory Committee thirdly seeks an interpretation from this Office as to whether Directive No. [ ], issued by the Government of [State] in 2008, is contradictory to the terms of the Lease Agreement. As explained in a memorandum, dated 24 July 2008, from this Office, copy enclosed,* the Directive No. [ ], issued by the Government of [State], provides for the procedures for remission and reimbursement of indirect taxes, such as VAT, in respect of goods and services paid by "Organizations enjoying Special Privileges," such as the United Nations. However, as noted above, the Lease Agreement fully exempts the Organization from payment of such taxes, including VAT, in respect of the land, the premises or other improvements thereon, and any materials, equipment, supplies and other goods and services that are required for the construction of such premises or other improvements. Accordingly, the Directive No. [ ] is not contradictory to the Lease Agree-

* Reproduced in section 1 (d) of this chapter.

ment, because no taxes should be paid under the Lease Agreement for which the Organization would need to seek remission or reimbursement under the procedures set forth in Directive No. [ ].

6. Thus, the Directive No. [ ] would only apply to the reimbursement or remission of taxes, including VAT, in accordance with Article II, Section 8, of the 1946 Convention on the Privileges and Immunities of the United Nations,* in cases in which the Organization pays taxes, including VAT, on goods and services procured by the United Nations in [State] outside of the scope of the Lease Agreement.

5 September 2008

2. Procedural and institutional issues

(*a*) Memorandum to the Executive Secretary, Secretariat of the Basel Convention,** regarding the criteria for accreditation of representatives of Non-Governmental Organizations (NGOs) from [Province] of [State] to meetings of the Basel Convention

Accreditation procedure of organizations as observers in official meetings—General Assembly resolution 2758 (XXVI)—Substantive secretariats must ascertain the *bona fide* nature of the organizations by examining a copy of their registration in their headquarters country, in the case of NGOs as evidence of their non-profit status—Intergovernmental organs must consider the requests and take a formal decision, normally on a "non-objection basis"—Possibility for UNOG Director-General to refuse access to representatives of NGOs on safety and security grounds—ID cards and passes for United Nations premises issued by the Department of Safety and Security upon formal request of the substantive secretariat

1. I refer to your memorandum of 6 November 2007 seeking our guidance on the criteria for accreditation of representatives of NGOs and other observer delegations from [Province] of [State], in meetings of the Basel Convention.

I. Background

2. You inform us that at the sixth session of the Open-ended Working Group to the Basel Convention, held in Geneva from 3 to 7 September 2007, three NGO representatives bearing identification documents issued by purported authorities of [Province] of [State] were denied access to the meeting by the United Nations Office in Geneva (UNOG) security assigned to protect the premises where the meeting was taking place. When the Secretariat of the Basel Convention complained about it, UNOG security officers argued that in accordance with instructions issued by the Director-General "access badges to the Palais des Nations can only be issued upon presentation of a valid identification document issued *by a State recognized by the General Assembly*" (emphasis added). Apparently, UNOG security claims that such an instruction is based on the General Assembly resolu-

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

** United Nations, *Treaty Series*, vol. 1673, p. 57.

tion 2758 (XXVI) which determines that, for United Nations purposes, the representatives of the [State] are the only legitimate, representatives of [State] to the United Nations.

3. You also inform us that several members of the Working Group expressed concerns about the situation indicating that "admission of observers to meetings of the Convention was the prerogative of the Parties". In this respect, you draw our attention to article 15 (6) of the Basel Convention, which reads as follows:

> "[...] Any other body or agency, whether national or international, governmental or non-governmental, qualified in fields relating to hazardous wastes or other wastes which has informed the Secretariat of its wish to be represented as an observer at a meeting of the Conference of the Parties, may be admitted unless at least one third of the Parties present object. The admission and participation of observers shall be subject to the rules of procedure adopted by the Conference of the Parties."

4. Since a meeting of the Conference of the Parties is scheduled for June 2008, you would like to receive our guidance "on whether [Province] observers can be admitted to Basel Convention meetings and, if so, what form of identification might be accepted."

II. Practice of the United Nations Secretariat

5. The issue of accreditation, presence and participation of observers in meetings of intergovernmental organs is to be determined and assessed by the organs themselves, in coordination with their substantive secretariats, within the framework of their relevant rules of procedure, decisions, policies and practices.

6. The normal practice of the Organization with respect to this question is for the entities wishing to participate as observers in the works of a particular organ to send an application or request to the substantive secretariats. Secretariats are to ensure that these entities are *bona fide* organizations relevant to that organ before submitting them to the consideration of the intergovernmental organs. Customarily, secretariats ascertain the *bona fide* nature of the organizations by examining a copy of their registration in their headquarters country, in the case of NGOs, as evidence of their non-profit status.

7. In the case of NGOs based in the [Province] of [State], since the adoption by the General Assembly of resolution 2758 (XXVI), the United Nations Secretariat considers that their headquarters country is the [State]. The Secretariat accordingly considers itself not to be in a position to proceed on the basis that an entity based in the [Province] of [State] is a *bona fide* organization, unless it is provided with documents issued by the authorities of the [State] certifying that that entity is incorporated or headquartered in that country. This is, in particular, the practice with respect to NGOs seeking consultative status with the Economic and Social Council.

8. Once the substantive secretariat has satisfied itself of the *bona fide* nature of the requesting organizations and that they have fulfilled all required criteria, it is for the intergovernmental organs to consider the requests and to take a formal decision, normally, on a "non-objection basis", accepting or not the presence and participation of these organizations in their meetings as observers.

9. The role of security is to assess threats and mitigate risks to ensure the safety and security of the participants in those meetings, including observers, and the United Nations property. In that respect, it is the judgment of the UNOG Director-General, as

the "Designated Official" in Geneva responsible for security, to assess the risks in any given situation and take the appropriate measures. That was, for example, the case of NGO representatives subject to requests for arrest or detention by Interpol who were denied access to a meeting of the former Commission on Human Rights at the Palais in Geneva by the UNOG Director-General in 2005.* That was a policy decision taken by the UNOG Director-General within the scope of his security responsibilities.

III. Analysis and advice

10. In light of the practice, as described above, and in the absence of a security threat, the matter of whether "[Province] observers can be admitted to Basel Convention meetings and, if so, what form of identification might be accepted" should be examined in the light of the rules of procedure, decisions, policies and practices of the Basel Convention and the Organization at large. Please note that any organization holding activities within United Nations premises or under the auspices of the United Nations should follow the Organization's rules.

11. With respect to the first part of your question, we would presume that the Basel Secretariat follows the above-described practice of substantive secretariats to ascertain the *bona fide* nature of all entities which have informed it of their interest to be represented as observers, before submitting them to the consideration of the Conference of the Parties, or the relevant subsidiary organ of the Convention. This practice should also include the procedures outlined in paragraph 7 above with respect to NGOs based in the [Province] of [State], as we understand other environmental treaty bodies, whose secretariat is also provided by the United Nations Environment Programme, do. Thus, NGOs from the [Province] of [State] should be required to provide proof of registration issued by the authorities of the [State].

12. Thereafter, and pursuant to article 15 (6) of the Basel Convention, the Basel Secretariat should present the list which includes any organization "which has informed the Secretariat of its wish to be represented as an observer at a meeting of the Conference of the Parties" for the consideration of the Parties. Also pursuant to article 15 (6), any such organization "may be admitted unless at least one third of the Parties present object."

13. In light of the above, NGOs based in the [Province] of [State] competent in the subject matter of the Convention, can only be included in the list referred to above, if the above-described procedure has been successfully followed, in particular, they have provided proof of registration issued by the authorities of the [State]. In our view, this procedure should be applicable also to meetings of subsidiary organs of the Convention, such as the Open-ended Working Group.

14. Turning to the second part of your question regarding the identification required for legitimate representatives of accepted NGOs to enter United Nations premises, we would like to draw your attention to the Department of Safety and Security (DSS) Standard Operating Procedures on issuance of ID cards and passes. In accordance with these procedures, the substantive secretariat should make a formal request for passes, on the basis of the determination made by the intergovernmental organ, in the form of a "memo-

* Reproduced in the 2005 edition of this publication, United Nations publication, Sales No. E.08.V.1 (ISBN 978-92-1-133664-1), chapter VI A.

randum, on United Nations letterhead, signed by an authorized signatory". In order for DSS to issue the passes, the "requestor must present a valid form of photo identification, such as a passport or driver license." This procedure, which is acceptable from a legal point of view, is followed at Headquarters.

15. In our view, the above DSS Standard Operating Procedures is normally sufficient to grant ground passes and no additional condition is required. In any event, before any future meetings of the Basel Convention take place, we would suggest that you discuss any concern you may have on this particular issue in light of the opinion stated in this memorandum with UNOG security and consult with the Senior Legal Liaison Officer in UNOG, to avoid any misunderstandings.

4 February 2008

(*b*) Interoffice memorandum to the Director of the Investment Management Service of the United Nations Joint Staff Pension Fund (UNJSPF) regarding procurement of a securities lending programme

In accordance with article 19 of the Fund's regulations, decisions concerning investment of the assets of the UNJSPF are vested exclusively in the Secretary-General, who has delegated such authority to the Representative of the Secretary-General for Investment of the Assets of the Fund—Legal obligation to consult with the UNJSPF Investments Committee, and to receive suggestions from the UNJSPF Board, regarding investment policies and decisions—In order to facilitate decision-making, recommendation that the "concurrence" of the Investments Committee and of the Board be obtained regarding the establishment of, or changes to, investment policies or practices

1. I refer to your e-mail message of 19 December 2007, by which you raised questions about my prior memorandum, dated 13 August 2007 (copy enclosed for ease of reference),[*] concerning the above-referenced matter. Specifically, you raised the question as to what was meant by the statement, set forth in paragraph 5 of my memorandum, reiterating what had been previously stated by the Director of the General Legal Division in her memorandum of 17 October 2006, concerning this matter (see copy enclosed).[**] Thus, I stated that, before issuing the request for proposal (RFP) for services relating to the operation of a securities lending programme for the United Nations Joint Staff Pension Fund (Fund), the Representative of the Secretary-General for the Investment of the Assets of the Fund should confirm to the Investment Management Service and the Procurement Service that he has "*consulted with and obtained the concurrence* of the Investments Committee and the Board" of the Fund "with respect to engaging in a securities lending programme" before committing to a procurement action (emphasis added). In your e-mail message, it was questioned whether the recommendation to consult with and to obtain the "concurrence" of the Investments Committee and the Board of the Fund conforms to the provisions of article 19 of the Fund's Regulations.

2. As this Office has explained on numerous occasions in advice addressed to the Representative of the Secretary-General for the Investment of the Assets of the Fund, as

[*] Not reproduced herein.

[**] Not reproduced herein.

well as addressed to the Director of the Investment Management Service 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". Thus, in accordance with article 19 of the Regulations of the Fund, decisions concerning the investment of the assets of the Fund are vested exclusively in the Secretary-General, who has delegated such authority to the Representative of the Secretary-General for Investment of the Assets of the Fund. Moreover, in exercising such decision-making authority, the Representative of the Secretary-General must "consult" with the Investments Committee regarding the establishment of, or modifications to, policies or practices regarding the investment of the assets of the Fund, including, for example, questions regarding the types and categories of investments, establishment of a securities lending programme, etc. In addition, the Representative of the Secretary-General must receive suggestions "from time to time" from the Board of the Fund on these investment policy matters.

3. While the Representative of the Secretary-General is legally obligated only to "consult" with the Investments Committee and to "receive suggestions" from the Board regarding investment policy and decisions, as a practical matter, the Representative of the Secretary-General is likely to have an easier time in exercising his decision-making authority under article 19 of the Regulations of the Fund if he receives the "concurrence" of the Investments Committee and of the Board regarding the establishment of, or changes to, investment policies for the Fund. The experience of the Fund in dealing with the question of how to manage the North American equities portfolio underscores the importance of obtaining concurrence among the bodies charged with reviewing the Fund's investment-policies. Such considerations, and not the legal provisions set forth in the Regulations of the Fund concerning the Secretary-General's primary authority over investment policy, are the basis of the recommendation set forth in paragraph 5 of my memorandum of 13 August 2007, concerning this matter. As noted, my advice merely reiterated the same recommendation of the Director of the General Legal Division, as set forth in her memorandum of 17 October 2006, concerning this matter.

4. I also note that it appears that both the Investments Committee and the Board, in fact, have concurred with the proposal of the Representative of the Secretary-General to engage in a securities lending programme. Thus, as reported in paragraphs 55 and 56 of the report of the fifty-fourth session of the Board of the UNJSPF regarding its session held in New York in July 2007 (JSPB/54/R.42, of 13 July 2007), the proposed securities lending programme was discussed by the Board, which also received the favourable comments on the proposed securities lending programme made by the Investments Committee. In its observations on the investments policies of the Representative of the Secretary-General, elements of the Board expressed reservations only concerning matters unrelated to a securities lending programme (see paragraphs 59 and 60 of the report). However, the Board endorsed the overall investment policies of the Representative of the Secretary-General (see paragraphs 62 of the report). Accordingly, it appears that, with respect to the proposed securities lending programme, the Representative of the Secretary-General has met his legal obligations under article 19 of the Regulations of the Fund to consult with the Investments Committee and to receive suggestions from the Board. Moreover, as stated in the

Board's Report, both the Investments Committee and the Board appear to have concurred with the proposal for the Fund to engage in a securities lending programme.

5. As discussed in both of the prior memoranda from this Office concerning this matter, as referred to previously, the Investment Management Service and the Procurement Service may wish to liaise with this Office, who is being assisted by outside counsel for the Fund's investment matters, to ensure that the elements of any procurement activities and any resulting contracts for services relating to a securities lending programme comply with the applicable legal requirements for such a programme, including ERISA compliance.

7 February 2008

(*c*) Note to the Executive Office of the Secretary-General (EOSG) on policy considerations related to the filing of *amicus curiae* briefs

Establishment of guidelines for the filing by United Nations Units of *amicus curiae* briefs in national and international courts—Such briefs should fall within the mandate of the Unit—Briefs should only be submitted in cases putting at stake the interests of the United Nations or relating to the work of the United Nations—Briefs should address a new issue of great importance in the area of expertise or experience of the Unit—Briefs to be cleared by EOSG in order to guarantee the consistency of United Nations positions and policies

1. This is in reference to your note dated 21 December 2007 requesting that the Office of Legal Affairs (OLA) prepare a background note to serve as the basis for initial discussions between EOSG and other relevant departments concerning the filing of *amicus curiae* briefs. You note that certain legal and political considerations may arise regarding the filing of *amicus* briefs, and also raise the issue as to what process, if any, should be adopted when a United Nations Secretariat official or unit wishes to file an *amicus* brief in the name of the United Nations. Please note from the outset that United Nations experts who are not Secretariat officials (e.g. Special Rapporteurs of the Human Rights Council) might not be subject to the authority of the Secretary-General in this regard.

2. In light of the relatively new, and increasingly growing, practice of the United Nations submitting *amicus* briefs before national and international courts, it is our view that it may be helpful if certain guidelines were established in respect of the preparation and submission of *amicus* briefs, which would apply across the United Nations system. Such guidelines would address issues such as (i) whether the submitting official or unit has a mandate which would allow it to submit an *amicus* brief; (ii) the kinds of cases in which the United Nations should present *amicus* briefs; (iii) the nature and content of *amicus* briefs; and (iv) the process for clearing an *amicus* brief prior to its submission.

3. While the mandate of a submitting Secretariat official or unit, the occasion in which an *amicus* brief should be submitted, and the appropriate nature of the *amicus* brief, may all be inter-connected in certain respects, our views as to each of these issues are set forth below:

(a) *mandate* – the *amicus* brief should clearly fall within the mandate of the particular official or unit. In this connection, we recall, for example, the High Commissioner for Human Rights' *amicus* brief setting forth relevant international jurisprudence with respect to the death penalty, or with respect to the work of human rights officers in the

field. In such cases, it was clear that the briefs were consistent with the mandate of the Office of the High Commissioner for Human Rights concerning human rights jurisprudence and advocacy.

(b) *the occasions on which the United Nations should submit* amicus *briefs – amicus* briefs should only be submitted in cases where the United Nations Secretariat has a clear interest in presenting its views to the court concerned, *i.e.,* in particular cases where the interests of the United Nations are at stake, or where the case at hand is directly related to the work of the United Nations in some aspect. For example, in 2006, OLA prepared an *amicus* brief for submission on behalf of the Organization in a case before the European Court of Human Rights (ECHR) in respect of specific questions addressed to the United Nations by the ECHR regarding role of the United Nations Interim Administration Mission in Kosovo; in that case, the United Nations had an interest in making submissions as it was one of the relevant actors in the case before the Court, and had particular knowledge with respect to the role of the United Nations in Kosovo.

(c) *the nature and content of the* amicus *brief* – if an *amicus* brief is to make a meaningful contribution to the deliberations of the court, it should address an issue which is new, innovative, of great importance, or topical in some regard, and one upon which the official or unit submitting the brief has particular expertise or experience (legal, factual, etc.). In this respect, we recall that when OLA submitted an *amicus* brief before the United States District Court, for the Southern District of New York, in September 2005 in relation to an action concerning the premises of the Palestine Mission, the *amicus* brief outlined the United Nations law concerning the applicability of the 1946 Headquarters Agreement,* the status of Palestine at the United Nations, and the importance of the functions of the Palestine Mission to the work of the United Nations. In other words, an *amicus* brief submitted by the United Nations Secretariat should concern matters which are within the particular purview, knowledge and expertise of the United Nations.

4. Regarding process, it is our view that *amicus* briefs in the name of the United Nations Secretariat, an official (*e.g.,* Secretary-General, Special Representative of the Secretary-General, High Commissioner for Human Rights, High Commissioner for Refugees), or unit should be sent to EOSG for clearance well ahead of the deadline for their submission to the relevant court. This is to ensure that the content of the briefs is consistent with general United Nations policy on the issue at hand; that it does not purport to waive the privileges and immunities of the United Nations or its staff; that it is legally correct; and that it is of a high quality. In this connection, we note that the EOSG may in turn wish to (i) request OLA to clear particular draft briefs for legal content and procedure, and with respect to privileges and immunities; and/or (ii) request the Department of Peacekeeping Operations or the Department of Political Affairs or other relevant departments, to examine draft briefs to ensure that their content does not raise policy issues which may negatively impact on the relationship between the United Nations and Member States, or does not prejudice United Nations operations in the field.

5. Another issue for policy consideration is whether all United Nations Secretariat officials and units should submit their *amicus* briefs to EOSG for clearance, or whether some could be considered more "autonomous" than others in this regard, and thus not

* United Nations, *Treaty Series*, vol. 11, p. 11.

need EOSG clearance; "self-regulating" as it were. That being said, in our view the criteria listed above should apply to all Secretariat officials and units.

16 April 2008

(*d*) Interoffice memorandum to the Senior Legal Officer, United Nations Office in Vienna (UNOV), regarding the relationship between the United Nations Office on Drugs and Crime (UNODC) and the United Nations Interregional Crime and Justice Research Institute (UNICRI)

LEGAL RELATIONSHIP BETWEEN UNODC AND UNICRI—UNICRI IS A UNITED NATIONS ENTITY FORMING PART OF THE UNITED NATIONS SYSTEM—ADMINISTRATIVE SUPPORT TO UNICRI PROVIDED BY UNODC, ON BEHALF OF UNOV—REIMBURSEMENT TO THE ORGANIZATION OF THE COST OF SUCH SUPPORT BY UNICRI—RESPONSIBILITY OF UNODC AND UNICRI TO AGREE AND CLARIFY THE RELEVANT TERMS AND CONDITIONS FOR THE PROVISION OF THOSE SERVICES—UNICRI SHOULD CARRY OUT ITS ACTIVITIES IN CLOSE COLLABORATION AND COORDINATION WITH, *INTER ALIA*, BODIES WITHIN THE UNITED NATIONS SYSTEM—UNODC NOT RESPONSIBLE OR ACCOUNTABLE FOR UNICRI ACTIVITIES—UNICRI AND UNODC ARE LEGALLY SEPARATE ENTITIES, WITH DISTINCT CHAINS OF ACCOUNTABILITY

1. I refer to your memorandum dated 27 February 2008 in which you seek legal advice on the scope and contents of the responsibility of the Executive Director of the United Nations Office of Drugs and Crime (UNODC) "in the interest of clarifying the responsibility and accountability for United Nations Interregional Crime and Justice Research Institute (UNICRI) activities within the Secretariat."

Background

2. By its resolution 1989/56 of 24 May 1989, the Economic and Social Council established UNICRI, and adopted its statute ("the Statute").

3. Pursuant to the Statute, UNICRI "and its work shall be governed by a Board of Trustees under the overall guidance of the Committee on Crime Prevention and Control" ("the Commission").[1] The seven members of the Board of Trustees, each of whom are nominated by the Secretary-General and endorsed by the Economic and Social Council, are appointed in their individual capacity. They shall be eligible for reappointment by the Commission with the endorsement of the Economic and Social Council for not more than one additional term.

4. In addition, "a representative of the Secretary-General, who shall normally be the Head of the Crime Prevention and Criminal Justice Branch of the Centre for Special Development and Humanitarian Affairs, a representative of the Administrator of the

[1] The Committee on Crime Prevention and Control was dissolved in 1991 further to paragraph 11 (a) of General Assembly resolution 46/152 of 18 December 1991. In the same resolution, paragraph 11 (b), a "commission on crime prevention and criminal justice as a new functional commission of the Economic and Social Council . . ." was created.

United Nations Development Programme, a representative of the host country, and the Director of the Institute shall serve as *ex officio* members of the Board."[2]

5. The role of the Board, under the guidance of the Commission, is to formulate principles, policies and guidelines for the activities of UNICRI, and on the basis of recommendations or reports submitted by the Director of UNICRI, approve work programmes and budget proposals of the Institute, evaluate the Institute's activities, make recommendations for the operation of the Institute, and periodically report to the Economic and Social Council through the Commission.

6. The Director of UNICRI is appointed by the Secretary-General after consultation with the Board of Trustees, and has the overall responsibility for the organization, direction, and administration of UNICRI in accordance with general directives issued by the Board of Trustees and within the terms of the authority delegated to him by the Secretary-General.

7. Under the Statute, as a United Nations entity and forming part of the United Nations system, UNICRI is subject to the United Nations Financial Rules, the United Nations Staff Rules, and all other administrative issuances of the Secretary-General, except as otherwise decided by the Secretary-General. The staff members of UNICRI are appointed by the Director of UNICRI in the name of the Secretary-General and limited to service with the Institute. The staff members are responsible to the Director in the exercise of their functions. The terms and conditions of service of the Director and the staff members are governed by the United Nations Staff Regulations.

Analysis

8. You indicate that you would like to clarify the responsibility and accountability for the activities of UNICRI within the Secretariat since in your view there is no "formal organizational link between UNODC and UNICRI despite the fact that UNODC is responsible for the provision of support to UNICRI in terms of finance and personnel matters."

9. We note that under article VIII of the Statute, the Secretary-General provides UNICRI with the appropriate administrative and other support in accordance with the Financial Regulations and Rules of the United Nations further to the Economic and Social Council resolution 1989/56 of 24 May 1989. We understand that UNICRI reimburses the Organization the cost of such support as determined by the Controller of the United Nations in consultation with the Director of UNICRI.

10. The Secretary-General's bulletin entitled "Organization of the United Nations Office at Vienna" (ST/SGB/2004/5)[*] dated 15 March 2004 ("the UNOV Bulletin") at para-

[2] The Centre for Social Development and Humanitarian Affairs was dissolved when the Secretary-General established the Centre for International Crime Prevention in accordance with the reform programme contained in the Secretary-General's report "Renewing the United Nations: A programme for reform" (A/51/950), dated 14 July 1997.

[*] 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).

graph 2.1 states that the United Nations Office at Vienna (UNOV) "provides administrative and other support services to United Nations Secretariat units [and] administers joint and common services for other organizations of the United Nations system located in Vienna." Reading this Bulletin in conjunction with the Secretary-General's bulletin entitled "Organization of the United Nations Office on Drugs and Crime" (ST/SGB/2004/6) also dated 15 March 2004 ("the UNODC Bulletin"), the Director General of UNOV also serves as the Executive Director of UNODC. Under paragraph 3.2 of the UNODC Bulletin, the Executive Director "acts on behalf of the Secretary-General in fulfilling the responsibility that devolves upon him . . . under the terms of . . . resolutions of United Nations organs relating to international drug control or crime prevention." This function is devolved to the UNODC Director of the Division for Treaty Affairs who, on behalf of the Executive Director of UNODC, fulfils "the responsibilities devolving upon the Secretary-General under the drug control, crime prevention and terrorism conventions and instruments as well as relevant intergovernmental resolutions."

11. In light of the fact that UNICRI was established as a result of a resolution of a United Nations organ and taking into account the relevant provisions in both the UNOV and UNODC Bulletins, we would conclude that the provision of such administrative and other support services is carried out by UNODC, on behalf of UNOV. It is therefore for UNODC and UNICRI to agree and clarify the relevant terms and conditions under which the services are provided.

12. You further indicate that there is no formal relationship between UNODC and UNICRI, and that UNODC has no means of ensuring the effective coordination of UNICRI, which seems to be based on *ad hoc* contacts and consultations and on the membership of UNODC Director of the Division for Treaty Affairs on the UNICRI Board of Trustees.

13. We note that UNICRI, in pursuit of its objectives and functions as outlined under article II of the Statute, should carry out its activities in close collaboration and coordination with, *inter alia*, bodies within the United Nations system. Furthermore, we note that under the UNODC Bulletin, one of the core functions of the UNODC Director of the Division for Treaty Affairs is to "coordinate the activities of UNICRI and ensure cooperation with regional and affiliated criminal justice institutes."

14. In our opinion, while the above reflects a need for the coordination of activities in the field of crime, terrorism prevention, and criminal justice across the United Nations, it does not translate into UNODC being responsible and accountable for UNICRI activities. Indeed, UNICRI and UNODC are legally separate entities, with distinct chains of accountability. As a subsidiary organ of the Economic and Social Council and in accordance with its Statute, UNICRI is accountable to the Council, through the Board of Trustees and the Commission, for its activities. The fact that UNICRI and UNODC should coordinate activities in the field of criminal justice does not establish any accountability lines between them.

Conclusion

15. In sum, for the reasons outlined above, it is our understanding that the Executive Director of UNODC is not responsible for the activities of UNICRI, but should coordinate with it activities in the field of criminal justice. Both organizations, UNODC and UNICRI,

should agree on the adequate mechanisms to ensure that the required coordination is done in an effective manner, without necessarily creating any responsibility and accountability links between them. Furthermore, it is for the Executive Director of UNODC, as delegated by the Executive Director of UNOV, under the terms and conditions agreed upon with UNICRI, to provide administrative and other support services as required by the Institute. We note that similar arrangements in relation to the appointment of the UNICRI Director and staff, as well as the provision of administrative and other support services, are in place with the other four research and training institutes, namely the United Nations Institute for Training and Research (UNITAR), United Nations Research Institute for Social Development (UNRISD), United Nations Institute for Disarmament Research (UNIDR), and the United Nations Research and Training Institute for the Advancement of Women (INSTRAW), all of whom fall under the umbrella of the Economic and Social Council.

21 April 2008

(*e*) Note to the Assistant Secretary-General, Executive Director of the United Nations Institute for Training and Research (UNITAR), regarding the autonomy of UNITAR

UNITAR defined under its Statute as an autonomous institution within the framework of the United Nations—The responsibilities of the Secretary-General as the chief administrative officer apply also with respect to UNITAR—UNITAR has limited legal capacity—UNITAR staff is subject to the United Nations Staff Regulations and Rules—Secretary-General's bulletins and Administrative Instructions do not apply to UNITAR unless expressly indicated—Authority of Executive Director of UNITAR to appoint and promote staff—UNITAR staff members are considered to be officials of the United Nations within the meaning of Article 105 of the Charter—Executive Director's authority with respect to other human resources matters not clearly defined in the Statute—United Nations Financial Regulations and Rules apply to UNITAR, subject to any special rules issued by the Executive Director in agreement with the Secretary-General and after consultation with the Board of Trustees and the Advisory Committee on Administrative and Budgetary Questions of the United Nations—Expenses by UNITAR met from voluntary contributions—Executive Director authorized to accept contributions on behalf of the Institute—Controller required to provide the necessary financial and accounting functions—Capacity under the Statute to enter into contracts does not imply authority for all procurement matters—Requests for delegation of procurement authority to be directed to the Under-Secretary-General for Management —UNITAR subject to audits by the United Nations Board of Auditors and the Office of Internal Oversight Services

(i) Background

1. The United Nations Institute for Training and Research ("UNITAR") was established by the Secretary-General, pursuant to General Assembly resolution 1934 (XVIII) of 11 December 1963. By paragraph 2 of that resolution, the General Assembly requested the Secretary-General to take the necessary steps to establish the Institute. In pursuance of

that authority, the Secretary-General approved the Statute of UNITAR ("Statute"), which was promulgated in 1965 and most recently amended in 1999.

2. Under the Statute, UNITAR is defined as an "autonomous institution within the framework of the United Nations",[1] established to perform the functions of training and research for the purpose of enhancing the effectiveness of the Organization. The Board of Trustees, whose members are appointed by the Secretary-General, formulates the principles and policies governing UNITAR activities and operations.[2] The Executive Director of UNITAR is appointed by the Secretary-General after consultations with the Board of Trustees.[3]

(ii) Legal status and authority

3. As an "autonomous institution" established by the Secretary-General within the framework of the United Nations, UNITAR is an integral part of the United Nations and bound under the Charter of the United Nations and by the relevant decisions of its principal organs. In this context, the Secretary-General's responsibilities as the chief administrative officer of the United Nations to ensure overall compliance with General Assembly directives and a consistent interpretation of the Staff and Financial Regulations and Rules also apply with respect to UNITAR. Moreover, the United Nations Administrative Tribunal (UNAT) has held that UNITAR is part of the United Nations and that its staff members are staff members of the United Nations.[4]

4. It follows from its autonomous character that UNITAR undertakes its activities with a sufficient degree of autonomy and is not dependent on the regular United Nations budget. Moreover, UNITAR is liable for its activities and any liability arising from acts it has undertaken in the exercise of its functions shall be met by the Institute from its own resources and cannot constitute a liability on other funds of the United Nations.[5]

5. UNITAR does not have its own legal capacity. However, in order to facilitate the implementation of its functions, the Institute was provided under its Statute with the authority to enter into contracts with organizations, institutions or firms.[6] Thus, UNITAR has limited legal capacity, which is drawn on the legal personality of the United Nations.[7] UNITAR also enjoys the status, privileges and immunities of the Organization provided under the Charter of the United Nations and other international agree-

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[1] UNITAR Statute, article I.

[2] UNITAR Statute, article III, paragraphs l (a) and 2 (a) .

[3] UNITAR Statute, article IV, paragraph 2.

[4] UNAT Judgement No. 423, Isaacs (1988), in paragraph III, states that "In Judgement No. 390, Walter (1986), the Tribunal held that 'UNITAR has no legal status of its own'. It was established at the request of the General Assembly by the Secretary-General. The Statute defines UNITAR as 'an autonomous institution . . . within the framework of the UN. . .'. This indicates that UNITAR is part of the UN and, hence, that staff members of UNITAR are staff members of the UN."

[5] Opinion of the Legal Counsel of 15 May 1996 [reprinted in the 1996 edition of this publication, United Nations publications, Sales No. 01.V.10 (ISBN 92-1-133644-9), p. 448].

[6] UNITAR Statute, article X, paragraph 2.

[7] Opinion of the Legal Counsel of 15 May 1996, *supra* note 5.

ments, in particular, the 1946 Convention* on the Privileges and Immunities of the United Nations.[8]

(iii) Human resources management

a. Applicability of United Nations Staff Regulations and Rules

6. Article IV, paragraph 5, of the UNITAR Statute provides that the "terms and conditions of service of the staff shall be those provided by the Staff Regulations and Rules of the United Nations, subject to such arrangements for special rules or terms of appointment as may be approved by the Secretary-General on the recommendation of the Board". Based on this provision, UNITAR staff are clearly subject to the United Nations Staff Regulations and Rules.[9] This Office is not aware of any special rules or terms of appointment that have been approved by the Secretary-General.

7. This Office previously advised in 1986 that UNITAR staff are also subject to United Nations administrative instructions.[10] Secretary-General's bulletin** ST/SGB/1997/1, entitled "Procedures for the Promulgation of Administrative Issuances," was subsequently issued in 1997, stating in section 3.4 that "Secretary-General's bulletins shall not, unless otherwise stated therein, be applicable to separately administered organs and programmes of the United Nations." From this provision, this Office understands that Secretary-General's bulletins and Administrative Instructions would not apply to UNITAR, unless otherwise expressly indicated, at least starting from 1 June 1997 (the date of entry into force of ST/SGB/1997/1).[11] This would not preclude the use by the UNITAR Administration of Secretary-General's bulletins and administrative instructions as guidance in applying the United Nations Staff Regulations and Rules to UNITAR staff members.

b. Authority to appoint and promote UNITAR staff and other personnel

8. Under article IV, paragraph 3, of the UNITAR Statute, the staff of the Institute are appointed by the Executive Director and are responsible to him in the exercise of their functions. On this basis, the authority of the Executive Director to appoint and promote UNITAR staff is recognized as being independent in so far as the authority is not delegated, but derives directly from the Statute.[12] In the selection of senior officials of the Institute, however, the Executive Director is required to consult with the Secretary-General.

9. Personnel decisions are made by the Executive Director on the basis of his independent authority and, accordingly, appointments made by the Executive Director are

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

[8] UNITAR Statute, article X, paragraph 1.

[9] For example, the Legal Counsel advised that Staff Rule 104.10 (a) on the recruitment of a staff member's sibling also applies to UNITAR. Opinion of the Legal Counsel of 22 April 1996.

[10] Opinion of the Legal Counsel of 4 November 1986.

** For information on Secretary-General's bulletins, see note in section 2 (d) above.

[11] The impact of section 3.4 of ST/SGB/1997/1 on the legal authority of UN administrative issuances in respect of UNITAR staff was explained in a letter from the General Legal Division to UNITAR, dated 19 December 2005.

[12] Opinion of the Legal Counsel of 22 April 1996. See also memorandum from the Office of Human Resources Management to the Legal Counsel, dated 5 November 2007.

limited to service with UNITAR. Moreover, as UNITAR is funded through extra-budgetary resources, the appointment of UNITAR staff members is limited to UNITAR also for the reason that the duration of these appointments is limited to the availability of funds. Notwithstanding the limitation of their appointments to UNITAR, staff of the Institute are considered "officials of the United Nations within the meaning of Article 105 of the Charter of the United Nations and of other international agreements and United Nations resolutions defining the status of the officials of the Organization."[13]

10. Related to the authority to appoint and promote staff is the authority to establish review bodies to advise on the appointment and promotion of staff. This Office previously advised in 1982 that the establishment of a UNITAR Appointment and Promotion Board would be in accordance with staff rule 104.14. Likewise, this Office would consider that the establishment by the Executive Director of an advisory body similar to the central review bodies provided for in the current staff rule 104.14,[14] would be within the independent authority of the Executive Director to appoint and promote staff.

11. Finally, the UNITAR Statute also addresses the appointment of other individuals associated with the Institute. These include rotating staff who are appointed by the Executive Director and full-time senior fellows appointed by the Secretary-General. Additionally, the Executive Director may also arrange for consultants, fellows and experts, as well as appoint correspondents and establish advisory bodies of individual experts or representatives of organizations and institutions.[15]

c. Authority of the Executive Director in respect of other human resources matters

12. Aside from the authority to appoint and promote staff, which is discussed above, this Office considers that the scope of the Executive Director's authority with respect to other human resources matters is not clearly defined in the Statute.

13. Article IV, paragraph 1 of the UNITAR Statute provides that the Secretary-General "on the recommendation of the Board, shall determine the composition and level of the staff of the Institute, having regard to the responsibilities of the posts and the financial resources and level of programme activities of the Institute, as necessary, to enable the Institute to fulfill its mandate and carry out its programme activities effectively."[16] This authority of the Secretary-General with respect to classification of posts is distinct from the Executive Director's authority to appoint and promote UNITAR staff, which is dealt with separately under article IV, paragraph 3, of the Statute. On the basis of article IV, paragraph 1, this Office considers that the Secretary-General has the authority to classify posts in UNITAR, which is currently being exercised by OHRM. In this connection, we understand that UNITAR recently advised the Conditions of Service Section in OHRM, New York, that, in view of the establishment of a Human Resources Unit in UNITAR

[13] UNITAR Statute, article IV, paragraph 3.

[14] Opinion of the Legal Counsel, dated 25 October 1982.

[15] UNITAR Statute, article IV, paragraph 8, and article VI.

[16] UNITAR Statute, article IV, paragraph 1.

in May 2007, UNITAR is in a position to take over the classification process for all its posts.[17]

14. It is reported that in 1998, a decision was taken that the United Nations Office in Geneva (UNOG) Human Resources Management Service would cease to administer UNITAR staff members for benefits and entitlements purposes, transferring full responsibility and accountability in this respect to the UNITAR Executive Director.[18] This transfer of responsibility from UNOG to UNITAR was further expanded to include approval of consultancy contracts and all other personnel related actions in 2002.[19] However, a written record of the 1998 decision does not appear to exist, either in the Office of Human Resources Management (OHRM) in New York, UNOG[20] or in UNITAR. Therefore, this Office is not in a position to comment on the scope of the delegation of authority to UNITAR in other human resources matters, aside from appointment and promotion. However, we understand that UNOG is of the view that the UNITAR Statute makes it clear that UNITAR has responsibility, accountability and authority in human resources matters.[21]

15. Consequently, if UNITAR wishes to assume additional responsibility in human resources matters, it would be desirable to address this matter in an exchange of letters or a Memorandum of Understanding between UNITAR and OHRM/Department of Management (DM), in order to set out clearly the scope of authority delegated to the UNITAR Executive Director. Based on our informal contacts with OHRM, we understand that OHRM would be in a position to consider granting the authority to classify posts to the Executive Director of UNITAR, provided that the terms and conditions of the delegation are recorded in writing. To that end, we suggest that UNITAR consult OHRM/DM to initiate the preparation of an appropriate instrument, if the consultation has not yet commenced.

(iv) Budget, finance and administration

a. Applicability of United Nations Financial Regulations and Rules

16. Article VIII, paragraph 1, of the UNITAR Statute provides that the United Nations Financial Regulations and Rules as well as the procedures of the United Nations shall apply to UNITAR financial operations. These are subject to any special rules and procedures that the "Executive Director, in agreement with the Secretary-General, may issue after consultations with the Board of Trustees and the Advisory Committee on Administrative and Budgetary Questions of the United Nations".[22] This Office is not aware of any special rules or terms on financial operations that have been issued by the Executive Director. The authority and responsibility to implement the United Nations Financial Regula-

[17] See Memorandum of the Director, Division for Organizational Development, OHRM, New York, of 5 November 2007, to the Legal Counsel, paragraph 10.

[18] Memorandum of the Chief, Human Resources Management Service, UNOG, of 2 August 2000, to the Executive Director of UNITAR.

[19] Memorandum of Chief, Human Resources Management Service, UNOG, of 19 September 2002, to the Executive Director of UNITAR.

[20] See Memorandum, *supra* note 17, paragraph 9.

[21] See *ibid.*

[22] UNITAR Statute, article VIII, paragraph 1.

tions and Rules are delegated to the Under-Secretary-General for Management (Financial Rule 101.1) who, in turn, has delegated authority for specified aspects of the Financial Regulations and Rules to the Controller of the United Nations and the Assistant Secretary-General/Office of Central Support Services (ASG/OCSS).[23]

17. The Institute is also subject to the decisions of the Board of Trustees which has the authority to formulate principles and policies governing UNITAR activities and operations as well as to establish the conditions for the utilization of funds and the receipt and disbursement of grants.[24]

b. Funds and budget

18. The expenses of UNITAR are met from voluntary contributions made by Governments, inter-governmental organizations, foundations and other non-governmental sources, which are credited to a General Fund. Additionally, UNITAR expenses are also met from proceeds from the sale of capital assets and donations and grants made with no specified purpose which are credited to a Reserve Fund. The Executive Director is authorized to accept contributions on behalf of the Institute. The funds of the Institute are maintained in a special account established by the Secretary-General.[25]

19. The UNITAR Statute requires the Controller to provide the necessary financial and accounting functions for administering the funds of the Institute.[26] In this respect, article VIII, paragraph 11, of the UNITAR Statute states that:

> "The funds of the Institute shall be held and administered solely for the purposes of the Institute. The Controller of the United Nations shall perform all necessary financial and accounting functions for the Institute, including the custody of its funds, and shall prepare and certify the biennial accounts showing the status of the Institute's special account."

In practice, we understand that certain of these financial and accounting services are provided to UNITAR by UNOG.[27] The budget of the Institute is adopted by the Board of Trustees on the basis of proposals submitted by the Executive Director.[28] The Executive Director is tasked with executing the work programme of the Institute and making the expenditures envisaged in the budget, as approved by the Board.[29] In addition, article III, paragraph 2 (b), of the UNITAR Statute provides for the Board of Trustees to "establish conditions and procedures for: (i) the utilization of funds from the General Fund and the Reserve Fund for the functions of the Institute in accordance with the priorities established by the Board; [and] (ii) the receipt and disbursement of special purpose grants".

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[23] ST/AI/2004/1, "Delegation of authority under the Financial Regulations and Rules of the United Nations," 8 March 2004.

[24] UNITAR Statute, article III, paragraph 2. For example, the "Policies and procedures in connection with the establishment and management of special purpose grants" were set forth by the Board of Trustees in the document UNITAR 94/Rev.2, dated 25 February 1994.

[25] UNITAR Statute, article VIII, paragraphs 2-7 and 10.

[26] UNITAR Statute, article VIII, paragraph 11.

[27] Memorandum from the Controller to the Legal Counsel, dated 16 November 2007, paragraph 3, hereinafter "Controller's Memorandum of 16 November 2007".

[28] UNITAR Statute, article III, paragraph 2(c).

[29] UNITAR Statute, article V, paragraph 2(b).

c. Contracts and procurement

20. As discussed above, article X of the UNITAR Statute envisages that the "Institute may, under the authority of the Executive Director, enter into contracts". However, the authority to enter into contracts is not necessarily the same as the authority for "all procurement matters", which is governed by the United Nations Financial Regulations and Rules to which UNITAR is bound. In this respect, financial rule 105.13(a) stipulates 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."

The Controller has indicated that "[w]hilst the authority of the Institute, its Board of Trustees and the Executive Director is derived from the UNITAR Statute, . . . UNITAR and the Executive Director continue to be bound by the United Nations Financial Regulations and Rules . . .".[30]

21. In the past, the UNOG Director of Administration delegated procurement authority to the Executive Director on a personal basis. However, the Controller has advised that "[d]ue to the change in administrative instructions governing the matter, according to which delegation can only be further delegated to staff under the supervision of the originator of the delegation, this authority was not delegated to the present Executive Director."[31] In addition, given that UNITAR is requesting a delegation of authority to enter into contracts for procurement up to US$ 100,000, which is an increase from the US$ 25,000 granted in 1997 to the previous Executive Director, the UNOG Director of Administration has advised the present Executive Director that requests relating to the delegation of procurement authority should be directed to the Under-Secretary-General for Management.[32] Therefore, in order to seek the delegation of authority in procurement matters, we would suggest that the Executive Director contact the Controller's Office directly.

(v) Audit matters

22. Article VIII, paragraph 12, of the UNITAR Statute provides that funds administered by and for the Institute shall be subject to audit by the United Nations Board of Auditors. The Board of Auditors set out the results of its review of the operations and audit of the financial statements of UNITAR for the biennium ended 31 December 2005, in A/61/5/Add.4.

23. In addition, as discussed above, UNITAR is subject to the United Nations Financial Regulations and Rules. Financial regulation 5.15, which has been adopted by the General Assembly, provides that the Office of Internal Oversight Services shall conduct independent internal audits. This regulation is applicable to UNITAR and, as far as we can

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[30] See Controller's Memorandum of 16 November 2007 to the Legal Counsel, paragraph 2.

[31] See *ibid,* paragraph 3.

[32] Memorandum from the UNOG Director of Administration to UNITAR, dated 8 May 2007. As explained in paragraph 4 of the memorandum, the basis for this decision was due to the fact that delegation could only be made to staff under the supervision of the delegating official.

determine, has not been contested by its Board of Trustees.[33] We consider that any deviation from or waiver of financial regulation 5.15 requires the General Assembly's approval as the Financial Regulations are adopted by the General Assembly.

(vi) Information communication technology (ICT)

24. We understand that UNOG currently provides ICT support to UNITAR, but this support is limited to basic services such as telecommunication and data network. We further understand that UNITAR develops and maintains its own PC configurations, as well as hosts and supports its computer applications.[34] However, it appears that this arrangement could be further explored with the other relevant offices concerned with information technology, taking into account particular needs of UNITAR in ICT matters.

13 May 2008

(*f*) Note to the Chef de Cabinet, Executive Office of the Secretary-General, on the establishment of a commission of inquiry into the assassination of Benazir Bhutto

ESTABLISHMENT OF COMMISSIONS OF INQUIRY UNDER THE AUSPICES OF THE UNITED NATIONS—SUCH COMMISSIONS ARE MECHANISMS OF INVESTIGATION OF CRIMES AND MAKE DETERMINATIONS OF FACT AND LAW—DISTINCTION BETWEEN COMMISSIONS OF INQUIRY AND FACT-FINDING MISSIONS, WHICH ARE LIMITED TO THE DETERMINATION OF FACTS—COMMISSIONS OF INQUIRY AND FACT-FINDING MISSIONS ARE ESTABLISHED BY THE SECURITY COUNCIL OR THE GENERAL ASSEMBLY, OR BY THE SECRETARY-GENERAL PURSUANT TO A MANDATE FROM EITHER ORGAN—COMMISSIONS MAY IN SOME CIRCUMSTANCES BE ESTABLISHED UNDER THE INHERENT POWERS OF THE SECRETARY-GENERAL AT THE REQUEST OF THE GOVERNMENT CONCERNED—IN THE ABSENCE OF A MANDATE FROM THE SECURITY COUNCIL OR THE GENERAL ASSEMBLY, THE SECRETARY-GENERAL IS UNDER NO OBLIGATION TO COMPLY WITH ANY GOVERNMENT'S REQUEST—COOPERATION OF THE GOVERNMENT NECESSARY FOR THE SUCCESSFUL CONDUCT OF THE INVESTIGATION AND THE IMPLEMENTATION OF THE RECOMMENDATIONS

1. The request of the Government of Pakistan for the Secretary-General to establish an international commission for the purpose of investigating the assassination of Benazir Bhutto, in order "to identify the culprits, perpetrators, organizers and financiers behind this heinous crime", has raised a number of concerns relating to the legal basis for the establishment of the commission, the Secretary-General's powers, the reporting lines of the commission and the confidentiality of its report, among others. This note sets out the background for the establishment of United Nations commissions of inquiry, their general characteristics, and the need for a mandate, in particular. . . .

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[33] See e.g. "Conclusions and Recommendations of the Forty-Fifth Session of the Board of Trustees", UNITAR/BOT/45/CR1/07/2007, paragraph 28, despite the Executive Director's statement that OIOS Auditors should consult the Chairman of the Board before engaging in audits. The Board then stated that it "*welcomes the services provided by OIOS and looks forward to the continuation of services in line with the established practice with other UN autonomous institutions*" (emphasis in the original).

[34] Memorandum from the Assistant Secretary-General and Chief Information Technology Officer to the Legal Counsel, dated 30 October 2007.

A. Commissions of Inquiry

2. Commissions of inquiry have in recent United Nations practice developed into mechanisms for investigating serious violations of human rights and international humanitarian law committed on a massive scale in the context of an armed conflict. They are mandated to establish the facts, qualify the crimes, determine responsibilities, and make recommendations with the purpose of ensuring the accountability of those responsible for the crimes. The most notable examples of commissions of this kind are: the Commission for the former Yugoslavia (Security Council resolution 780 (1992)), for Rwanda (Security Council resolution 935 (1994)), and the 1995 Commission of Inquiry for Burundi (Security Council resolution 1012(1995)) (S/1996/682).

3. Commissions of inquiry may also be established to investigate human rights abuses in the context of internal disturbances not amounting to an armed conflict. They include: the commission of inquiry established to investigate the massacre of internally displaced persons in Harbel, Liberia, on 6 June 2003; the commission of inquiry set up in 2001 to investigate allegations of extra-judicial executions carried out in Togo in 1998 (E/CN.4/2001/134, E/CN.4/Sub.2/2003/3); the 2004 Commission of inquiry mandated to investigate violations of human rights and international humanitarian law committed in Côte d'Ivoire since 2002; and the 2006 Independent special commission of inquiry for Timor-Leste (S/2006/391, S/PV.5457, and Security Council resolution 1690 (2006)).

B. Fact-finding missions

4. Fact-finding missions are established as an instrument of information-gathering to assist the United Nations in exercising its responsibilities in the area of international peace and security (see General Assembly resolution 46/59 of 9 December 1991). Fact-finding missions may also be established by the Secretary-General as part of his good-offices mandate and as a means of settlement of disputes.

5. Whereas commissions of inquiry make determinations of fact and law, the mandate of fact-finding missions is limited to determining the facts alone. The 1998 Panel on Algeria is an example of a fact-finding mission with the limited purpose of gathering information on the situation in a country, without the means or mandate to conduct a criminal investigation.

C. Commissions conducting a criminal investigation

6. Another kind of commission of inquiry is that established to conduct a *criminal investigation* into a common crime. The single, and perhaps so far unique, example is the International Independent Investigation Commission (IIIC) established to investigate the Hariri assassination in Lebanon. The IIIC has also been unique in that for the first time a United Nations established commission has been mandated to investigate a common crime under national, Lebanese, law. We should note in this connection that the International Commission against Impunity in Guatemala (CICIG), established by agreement between the United Nations and the Government to investigate organized crime in that country, does not have a mandate to *investigate* as such, but only to *assist* the General Prosecutor in the conduct of his investigations and prosecutions into organized crimes.

D. Legal basis for the establishment of commissions of inquiry

7. Commissions of inquiry and fact-finding missions are established either directly by the Security Council or the General Assembly, or by the Secretary-General pursuant to a mandate from either organ. They may also, in certain circumstances, be initiated under the inherent powers of the Secretary-General at the request of the Government concerned. In either case, the cooperation of the Government is a necessary condition for the successful conduct of an investigation and the implementation of its recommendations. The Government has to give access to its territory and to the sites of the investigation, guarantees of freedom of movement, unobstructed access to all sources of information and evidence, privileges and immunities, security arrangements, and protection of witnesses.

8. In the absence of a mandate from either organ, the Secretary-General is under no obligation to comply with any Government's request. In the exercise of his discretionary power, however, he may consider political, legal, financial or technical circumstances, and decide on the viability, propriety or desirability of establishing such a commission. In making his decision, the Secretary-General would also look at whether the matter is already before any of the United Nations deliberative bodies and give the most serious consideration to the views of such bodies on how the matter should be dealt with.

9. In the present case, while the Pakistani Government has indicated that it would not wish the Security Council to be in any way involved in the matter, failure to do so by the Secretary-General would be ill-advised. We note that the Security Council considered the attempted assassination and the assassination of Benazir Bhutto under the agenda item "Threats to international peace and security caused by terrorist acts" at its meetings of 22 October and 27 December 2007, respectively. Notably, Pakistan requested to participate in both meetings and was invited to do so, and did not object to the Security Council discussing the matter, including, in particular, issuing statements condemning the attack (S/PRST/2007/39, and S/PRST/2007/50, respectively).

10. While for the most part commissions of inquiry were established under a Security Council or a General Assembly mandate, there are examples of those established at the initiative of the Secretary-General or at the request of the State concerned. Their success or lack thereof is a lesson to be learned.

11. The 1997 Commission of Inquiry for the Congo was established without a mandate (and was not given access to the site of the investigation), and so was the 2000 Commission of Inquiry for Côte d'Ivoire (to investigate the killings in demonstrations held at the time of the presidential elections). The CICIG was established under a broad mandate of the General Assembly which was not explicit enough to address future difficulties relating to the funding and status of the Commission and its personnel. We should also add that in the recent case of Côte d'Ivoire, in the absence of a mandate by the Security Council to establish a commission of inquiry into the assassination attempt of Prime Minister Soro, the Secretary-General declined to establish such a commission at the request of the Government.

11 June 2008

(*g*) Interoffice memorandum to the Director of the Legal Support Office, United Nations Development Programme (UNDP), regarding whether the UNDP Audit Advisory Committee can report to the UNDP Executive Board

UNDP Audit Advisory Committee established by the UNDP Administrator—Normally a body established by an entity first reports to that entity, unless otherwise decided—The Committee to report to the Administrator, which may then bring relevant information to the attention of the Executive Board

1. This is in response to your memorandum of 12 June 2008, requesting our comments on whether the UNDP Audit Advisory Committee (the "Committee") can formally report to the UNDP Executive Board. I note that the Committee was established by the UNDP Administrator and, pursuant to its Terms of Reference dated 8 February 2008 ("TOR"), the Committee essentially performs functions to assist and advise the Administrator "in fulfilling his/her responsibilities regarding financial management and reporting, internal and external audit matters, risk management arrangements, and systems of internal control and accountability". (See paragraph 1.) With respect to reporting by the Committee, the TOR provide:

> "22. The Committee shall prepare a report on its work for the previous year for presentation to the Administrator by 31 March of every year. The report will include recommendations with respect to changes to its mandate. The Committee will also prepare a report for the annual session of the Executive Board. Upon request, the Chairperson shall present this report."

2. It is our understanding that, normally, a body established by an entity first reports to the establishing entity, unless otherwise decided. In the present case, the Committee was established by the Administrator as an advisory body to assist him in matters relating to, *inter alia*, financial management, reporting and audit. The Committee's TOR are silent as to whether the Committee can report to the Executive Board. In light of the foregoing, it would appear appropriate that the Committee report first to the UNDP Administrator. It would then be up to the Administrator to bring the relevant information provided by the Committee to the attention of the Executive Board, as necessary and appropriate. In this respect, I note that the Committee's "Annual Report for the Calendar Year 2007", together with the Associate Administrator's response thereto, addressed to the Chairperson of the Committee, dated 3 June 2008, have been submitted to the 2008 Annual Session of the UNDP Executive Board currently taking place in Geneva.

3. While the third sentence of paragraph 22 of the TOR states that the Committee will prepare a report for the annual session of the Executive Board, it does not specify how this report will be presented to the Board, *i.e.*, whether the report will be submitted directly to the Board by the Committee or through the Administrator. While it would seem more appropriate that such a report be submitted by the Administrator, we would suggest that this issue be clarified, and any necessary revision to paragraph 22 of the TOR be made, in order to avoid any misunderstanding in the future.

20 June 2008

(*h*) Note to Department of Political Affairs regarding the status of the International Conference on the Great Lakes Region (ICGLR)

Determination of the status of an entity for the purpose of granting that entity observer status in the General Assembly—General Assembly decision 49/426 of 19 December 1994—Definition of an international organization—Gradual process of institutionalization may lead to entities developing into international organizations—Member States' responsibility to determine the status of ICGLR for the purpose of granting observer status—Procedure for the granting of observer status in the General Assembly—Procedure initiated by a Member State requesting the inclusion of a corresponding item in the agenda of the General Assembly—Such inclusion to be decided by the General Assembly—Granting of observer status through a General Assembly resolution

1. This is with reference to your note to [the Legal Counsel] dated 2 June 2008, requesting our advice regarding the status of the International Conference on the Great Lakes Region (ICGLR) in connection with a possible request by the ICGLR for observer status in the General Assembly. Reference is also made to previous informal discussions between members of your Department and [a Legal Officer] of this Office on certain aspects of the question, in particular, the procedure for obtaining observer status in the General Assembly. . . .

2. In its decision 49/426 of 19 December 1994, the General Assembly decided that observer status "should in the future be confined to States and to those intergovernmental organizations whose activities cover matters of interest to the Assembly". The question of whether ICGLR is qualified for observer status in the General Assembly hinges, therefore, on its status as an intergovernmental or international organization.

A. Legal status of the International Conference on the Great Lakes Region

3. A number of international conventions use the laconic definition of "intergovernmental organization" to denote "international organization". This definition is used in article 2 (1)(i) of the 1969 Vienna Convention on the Law of Treaties,[*] article 1 (1)(1) of the 1975 Vienna Convention on the Representation of States in their Relations with International Organizations of a Universal Character,[**] and article 2 (1)(i) of the 1986 Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations.[***] This definition has been understood to mean an organization composed mainly of States and, in exceptional cases, of one or more international organizations, to the exclusion of non-governmental organizations.

4. More recently, in article 2 of the draft articles on the responsibility of international organizations, the International Law Commission (ILC) defined an international organization as "an organization established by a treaty or other instrument governed by international law and possessing its own international legal personality. International organizations may include as members, in addition to States, other entities". The commentary to Article 2 explains that, as in previous cases, this definition was considered

[*] United Nations, *Treaty Series*, vol. 1155, p. 331.

[**] A/CONF.67/16.

[***] A/CONF.129/15.

appropriate for the purposes of the draft articles and was not intended as a definition for all purposes.[1]

5. ICGLR is clearly a "Conference", that is, an association of States meeting regularly or frequently. Its first summit in Dar-es-Salaam was convened in 2004 following a number of Security Council resolutions and presidential statements calling for the convening of an international conference on peace, security, democracy and development in the Great Lakes Region.[2] The 2006 Pact on Security, Stability and Development in the Great Lakes Region (which entered into force on 21 June 2008) established the organs of the Conference (the Summit, the Regional Inter-Ministerial Committee and the Conference Secretariat). ICGLR is still considered by the United Nations as a conference or process.[3]

6. ICGLR was not established by a treaty, nor has any of the instruments under scrutiny established it as an international organization or otherwise endowed it with a distinct legal personality or treaty-making power. Nevertheless, the ICGLR/Conference Secretariat concluded a Memorandum of Understanding with the United Nations Economic Commission for Africa and has concluded a Headquarters Agreement with Burundi, by which, among other things, the Conference Secretariat was granted diplomatic status.

7. But while not yet an international organization, ICGLR may well develop into one through a gradual process of institutionalization, having a permanent Secretariat and other organs. In the practice of international organizations, there have been several examples of treaty bodies and other less structured mechanisms of international cooperation which became international organizations through the same process, *i.e.*, the Organization for Security and Cooperation in Europe and the Southern African Development Community. In most cases also, the transformation was formalized through a written agreement by the member States. For the purpose of granting observer status, however, it would be for the Member States of the United Nations and not for the Secretariat, to determine if ICGLR is an international organization.

B. Formal procedures for granting observer status

8. Neither the United Nations Charter nor the Rules of Procedure of the General Assembly address the question of observers. In practice, the General Assembly has adopted resolutions granting observer status to various organizations and entities. As indicated above, in its decision 49/426 of 19 December 1994, the General Assembly decided that observer status would be confined to States and intergovernmental organizations whose activities cover matters of interest to the Assembly.

9. It is for the Member States to initiate the process of granting observer status to an intergovernmental organization. The first step is for a Member State or a group of Member States to request the inclusion of an appropriate item in the agenda of the General Assem-

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[1] *Official Records of the General Assembly, Fifty-eighth Session, Supplement No. 10* (A/58/10), pp. 38-39.

[2] Security Council resolutions 1291 (2000), 1304 (2000), 1457 (2003), and 1493 (2003), and Presidential Statements S/PRST/1994/59 and S/PRST/1997/22.

[3] See the report of the Secretary-General on the preparations for an International Conference on the Great Lakes Region (S/2006/46) and Security Council President's statement S/PRST/2006/57.

bly. The request must be accompanied by a memorandum explaining why the item should be inscribed on the agenda and why the organization should be given observer status.

10. The General Committee of the General Assembly then reviews the request and recommends to the General Assembly whether or not to include the item in the agenda. If the item is included, the next step is for a Member State to sponsor a draft resolution by which the General Assembly would decide that the intergovernmental organization concerned is invited to participate in the sessions and work of the General Assembly in the capacity of an observer. Ultimately, it would then be for the General Assembly to take a decision on the proposed resolution.

11. By virtue of paragraph 2 of General Assembly resolution 54/195, the Sixth Committee of the General Assembly considers all applications for observer status before they are considered in the plenary session. It is highly likely, therefore, that the legal status of the applicant organization – as an international organization – would be determined on that occasion.

15 August 2008

(*i*) Interoffice memorandum to the Chief Executive Officer, United Nations Joint Staff Pension Fund (UNJSPF), regarding the legal status of the Special Tribunal for Lebanon in view of its application for membership to UNJSPF

Legal status of the Special Tribunal for Lebanon—Tribunal considered to be an international intergovernmental organization—Definition of international organizations in the draft articles of the International Law Commission on the responsibility of international organizations—Creation of the Tribunal through an international instrument governed by international law—International legal personality conferred on the Tribunal

1. I refer to a request dated 15 March 2008 from [Name], Chief of Legal Office, United Nations Joint Staff Pension Fund (UNJSPF), for a written explanation on the legal status of the Special Tribunal for Lebanon in relation to the Special Tribunal's application for membership of UNJSPF. I understand that the request has been revived in view of the upcoming General Assembly consideration of the UNJSPF Board's affirmative recommendation that the Special Tribunal be admitted to membership.

2. The opinion of the Office of Legal Affairs is that the Special Tribunal is an "international, intergovernmental organization" within the meaning of the Regulations of UNJSPF. The reasons for this view are set out below.

I. The Special Tribunal for Lebanon is an "international organization"

3. The International Law Commission's draft articles on the responsibility of international organizations define "international organization" as "an organization established by a treaty or other instrument governed by international law and possessing its own international legal personality. International organizations may include as members,

in addition to States, other entities". Thus, to be an international organization within the definition of the International Law Commission, an entity must: (a) be created by a treaty or other instrument governed by international law; and (b) have its own international legal personality.

(a) The Special Tribunal for Lebanon was established under international law

4. The process of the establishment of the Special Tribunal was rather complex and unique. The Agreement between the United Nations and the Lebanese Republic on the establishment of a Special Tribunal for Lebanon (the Agreement)* provided that it would enter into force on the day after the Government notified the United Nations in writing that the legal requirements for entry into force had been complied with. When political deadlock in Lebanon prevented Parliament from completing the domestic legal requirements for entry into force, the Security Council decided to bring the provisions of the Agreement into force using its powers under Chapter VII of the United Nations Charter.

5. Whether the Special Tribunal is regarded as having been established by agreement between the United Nations and Lebanon, or by the Security Council acting under Chapter VII of the Charter, it is clear in either event that the Special Tribunal was created through an international instrument governed by international law.

(b) The Special Tribunal for Lebanon has separate international legal personality

6. Legal personality may be conferred expressly by the constitutive instrument of an organization, or it may be implied from the organization's functions, object and purpose. The Agreement expressly confers the Special Tribunal with the legal capacity to enter into contracts, to acquire and dispose of property, to institute legal proceedings, and to enter into agreements with States for the exercise of its functions and for its operation. It is clear that the Special Tribunal has legal personality, including on the international plane.

II. The "intergovernmental" requirement in the Regulations of UNJSPF

7. The fact that the Special Tribunal may be deemed as resulting from an agreement between a State and the United Nations does not preclude it from being an international, intergovernmental organization within the meaning of the UNJSPF Regulations.

24 November 2008

(*j*) Interoffice memorandum to the Director of the Office for Economic and Social Council (ECOSOC) Support and Coordination, Department of Economic and Social Affairs (DESA), regarding amending financial regulations and rules of United Nations funds and programmes

Separate financial rules and regulations apply to United Nations Development Programme (UNDP), United Nations Populations Fund (UNFPA), United Nations Children's Fund (UNICEF) and World Food Programme (WFP)—United Nations

* Reproduced in the 2007 edition of this publication, United Nations publication, Sales No. E.10.V.1 (ISBN 978-92-1-133681-8), chapter II A.

FINANCIAL RULES AND REGULATIONS MAY, HOWEVER, APPLY TO UNDP, UNFPA AND UNICEF WITH REGARD TO MATTERS NOT SPECIFICALLY COVERED BY THEIR RESPECTIVE FINANCIAL REGULATIONS AND RULES—THE TERM "BUDGETING CYCLE" IS USED INTERCHANGEABLY WITH THE TERM "FINANCIAL PERIOD"—HARMONIZATION OF THE FINANCIAL RULES AND REGULATIONS OF THE UNITED NATIONS, UNDP, UNFPA, UNICEF AND WFP TO DEVELOP A COMMON SET OF FINANCIAL REGULATIONS AND RULES

1. I refer to your memorandum of 29 October 2008, seeking our urgent advice concerning the above-referenced matter. You stated that in accordance with General Assembly resolution 62/208 of 19 December 2007, entitled "Triennial comprehensive policy review of operational activities for development of the United Nations system", the Second Committee of the General Assembly is engaged in negotiations on a draft resolution on aligning the strategic planning cycles of the United Nations funds and programmes ("Strategic Planning Cycles") with the comprehensive policy review of United Nations operational activities for development ("Comprehensive Policy Review"). In this connection, you have provided, as background information, the report of the Secretary-General (A/63/207) of 1 August 2008, entitled "Implications of aligning the strategic planning cycles of the United Nations funds and programmes with the comprehensive policy review of operational activities for development", which, *inter alia*, provides options with regard to changing the Comprehensive Policy Review from a triennial to a quadrennial cycle and analyzes the implications of such a change on the planning process and cycle of the relevant United Nations funds and programmes, *i.e.,* the United Nations Development Programme (UNDP), United Nations Population Fund (UNFPA), United Nations Children's Fund (UNICEF) and World Food Programme (WFP). Your request has been referred to this Division for reply.[1]

2. You have stated that in order to align the Strategic Planning Cycles with the Comprehensive Policy Review, United Nations Funds and Programmes may have to amend their financial regulations and rules to adjust the periodicity of their budgeting cycles. In that connection, you have stated that the Secretariat has been requested to clarify the following two questions on which you seek legal advice:

> "1) in general, whether the financial regulations of United Nations funds and programmes are legally bound by the *Financial Regulations and Rules of the United Nations* (ST/SGB/2003/7)" and
>
> "2) in particular, whether their budgeting cycles could be adjusted regardless of article 1.2 of *Financial Regulations and Rules of the United Nations*, which stipulates that 'the financial period shall consist of two consecutive calendar years, the first of which shall be an even year'" (emphasis in the original).

We wish to note at the outset that the relationship between the above-referenced two questions and the proposal to align the Strategic Planning Cycles with the Comprehensive Policy Review is not entirely clear. Nevertheless, we provide advice regarding those two questions with respect to UNDP, UNFPA, UNICEF and WFP, because the Secretary-General's report (A/63/207) in response to the General Assembly's request in paragraph

[1] We understand that this is not the first time that the alignment of the Strategic Planning Cycles with the Comprehensive Policy Review is being considered by the General Assembly. See, *e.g.*, General Assembly resolution 32/197 of 20 December 1977, by which the General Assembly endorsed the conclusions and recommendations contained in the Annex thereto. See paragraphs 28 to 49 of the Annex to the resolution.

98 of its resolution 62/208 focuses on the alignment of the strategic planning cycles of those four entities, the Executive Boards of all of which report to ECOSOC (see A/63/207, paragraph 5).

Applicability of the United Nations Financial Regulations and Rules to UNDP, UNFPA, UNICEF and WFP

3. UNDP, UNFPA, UNICEF and WFP have their own financial regulations and rules, separate from the Financial Regulations and Rules of the United Nations ("United Nations FRR"), which govern their respective financial management and administration. The financial regulations of each of the four entities have been adopted by four respective governing bodies, *i.e.,* the Executive Board of UNDP/UNFPA in respect of the UNDP and UNFPA Financial Regulations, the Executive Board of UNICEF, and the Executive Board of WFP, in connection with their Financial Regulations, respectively. The Financial Rules of the four entities are promulgated by their Executive Heads. A brief summary of the authority concerning the Financial Regulations and Rules of the four entities is set out in the annex hereto,* including a copy of relevant provisions therefrom. In view of the foregoing, in general, the United Nations FRR do not apply to UNDP, UNFPA, UNICEF and WFP. However, in respect of UNDP, UNFPA and UNICEF, in regard to any matter not specifically covered by their respective Financial Regulations and Rules, the United Nations FRR shall apply, *mutatis mutandis*.

Financial periods of UNDP, UNFPA, UNICEF and WFP

4. With respect to the "budgeting cycles" of the four entities, referred to in your second question, we understand that the term "budgeting cycles" is used interchangeably with the term "financial period". As you have indicated, United Nations financial regulation 1.2 provides, *inter alia*, that "the financial period shall consist of two consecutive calendar years, the first of which shall be an even year". The term "financial period" is also defined in the Financial Regulations of UNDP, UNFPA, UNICEF and WFP, as described in paragraphs 5 to 8 below.

5. *UNDP.* UNDP financial regulation 2.04 provides that "[t]he financial period for the purpose of both the proposed utilization of resources and the incurring of and accounting for expenditures in respect of the biennial support budget shall consist of two consecutive calendar years (hereinafter referred to as a biennium), the first of which shall be an even year." In addition, UNDP financial regulation 12.03 provides that " . . . the financial period for the purpose of the proposed utilization of resources and of the entering into commitments shall be the duration of each UNDP programme activity", and financial regulation 26.05 provides that the term "financial period for the purpose of incurring and accounting for expenditures in respect of UNDP programme activities, including reimbursement of related agency support costs, shall consist of a single calendar year." Pursuant to UNDP financial regulation 1.02, amendments and exceptions to the UNDP Financial Regulations may be made only by the UNDP/UNFPA Executive Board, after review by the Advisory Committee on Administrative and Budgetary Questions (ACABQ).

* Not reproduced herein.

6. *UNFPA*. UNFPA financial regulation 6.4 provides that "[t]he financial period for the purpose of both the proposed utilization of resources and the incurring of and accounting for expenditures in respect of the biennial support budget shall consist of two consecutive calendar years (hereinafter referred to as a biennium), the first of which shall be an even year". In addition, UNFPA financial regulation 6.2 provides that " . . . the financial period for the purpose of the proposed utilization of resources shall be the duration of each project as specified in the project document" and UNFPA financial regulation 6.3 provides that "[t]he financial period for the purpose of incurring and accounting for expenditures in respect of programme activities, including reimbursement of related indirect costs, shall consist of a single calendar year". UNFPA financial rule 106.1 further provides that the financial period for the purposes of committing funds pursuant to financial regulation 6.2 shall not exceed the duration of the project length as specified in the project document. Pursuant to UNFPA financial regulation 1.2, amendments and exceptions to UNFPA Financial Regulations may be made only by the UNDP/UNFPA Executive Board. Pursuant to UNFPA financial rule 101.1 (b), the Executive Director may amend the UNFPA Financial Rules in accordance with UNFPA financial regulation 14.1 (a).

7. *UNICEF*. UNICEF financial regulation 6.4 provides that "[for the purpose of accounting for expenditures incurred in respect of the biennial budget, as provided for in article IX, the financial period shall consist of two consecutive calendar years, the first of which shall be an even year." In addition, UNICEF financial regulation 6.2 provides that " . . . the financial period for the purpose of the proposed utilization of resources and of the entering into commitments in respect of programme activities shall be the duration of each programme as provided for in article VIII", and UNICEF financial regulation 6.3 provides that "[t]he financial period for the purpose of accounting for expenditures incurred in respect of programme activities as provided for in article VIII shall consist of a single calendar year". Pursuant to UNICEF financial regulation 2.2, amendments to UNICEF Financial Regulations may be made only by the UNICEF Executive Board, after due consultations with the ACABQ.

8. *WFP*. WFP financial regulation 1.1 provides that the term "Financial period", for the purposes of the WFP Financial Regulations and Rules, "shall mean one calendar year starting on 1 January". WFP financial regulation 2.1 provides, *inter alia*, that the WFP Executive Board may, in exceptional circumstances, grant exemptions from these Financial Regulations. With respect to amendments to the Financial Regulations, pursuant to article VI.2(b)(vii) of the WFP General Regulations which provide the legal framework for WFP operations (and, as we understand, have been adopted by the General Assembly of the United Nations and the Food and Agriculture Organization of the United Nations (FAO) Conference), revisions to the WFP Financial Regulations may be made by the WFP Executive Board, in accordance with Article XIV of the WFP General Regulations. Article XIV.4 of the WFP General Regulations provides that "[i]n all matters relating to the financial administration of WFP, the Board shall draw on the advice of the [ACABQ] and the Finance Committee of FAO". Article XIV.5 of the WFP General Regulations provides that the Executive Board "shall, after receiving advice from the ACABQ and the FAO Finance Committee, establish Financial Regulations to govern the management of the WFP Fund."

9. As set out above, the term "financial period" has essentially an identical definition under United Nations financial regulation 1.2, UNDP financial regulation 2.04, UNFPA

financial regulation 6.4, and UNICEF financial regulation 6.4. However, under the WFP Financial Regulations, the term "financial period" does not correspond with the definition used in the United Nations FRR. We note that the definition of the term "financial period" under the Financial Regulations of UNDP, UNFPA, UNICEF and WFP may be amended by their respective Executive Boards, subject to the condition that: (i) in respect of UNDP and UNICEF, any such revisions would require review by and consultation with ACABQ, and (ii) in respect of WFP, it appears that such revisions would require consultations with the ACABQ and the FAO Finance Committee. Therefore, in response to your second question, it appears that the "budgeting cycles" of UNDP, UNFPA, UNICEF and WFP may be adjusted by their respective Executive Boards, notwithstanding United Nations financial regulation 1.2. However, any such changes would have to be made by their respective Executive Boards, and reported to ECOSOC and, in the case of UNDP and UNFPA, following consultations with the ACABQ and, as it appears, in the case of WFP, following consultations with the ACABQ and the FAO Finance Committee.

10. Finally, I should note that in accordance with paragraph 113 of General Assembly resolution 62/208, the exercise to harmonize the Financial Regulations and Rules of the United Nations, UNDP, UNFPA, UNICEF and WFP and develop a common set of financial regulations and rules is on-going, under the leadership of the respective Controllers/Comptrollers and the coordination by the United Nations Development Operations Coordination Office (DOCO). This Office is assisting the Secretariat, UNDP, UNFPA, UNICEF and WFP with the review and development of the draft harmonized financial regulations and rules.

3 November 2008

(*k*) Interoffice memorandum to the Assistant Secretary-General, Controller, regarding delegated authority for the Registrar of the Special Tribunal for Lebanon to sign contracts on behalf of the Tribunal

Unless otherwise authorized by the General Assembly, United Nations trust funds shall be administered in accordance with the United Nations Financial Rules and Regulations—Prior to gaining financial independence, the Special tribunal for Lebanon must conduct all procurement activities in accordance with the United Nations Financial Rules and Regulations—The Controller may delegate authority to the Registrar of the Tribunal to procure goods and services—Once funds are transferred to the Tribunal, contracts concluded by the Registrar to be assigned to the Tribunal—The United Nations may still bear residual liability under contracts entered into on behalf of the united nations and subsequently assigned to the Tribunal

1. I refer to the e-mail of 5 December 2008, from [Name], Financial Management Officer, transmitting to my Office an e-mail correspondence on the question as to whether the Registrar of the Special Tribunal for Lebanon (STL), who is a United Nations staff member, may be "granted procurement authority to enter into long-term contracts on behalf of STL for the provision of certain services". We understand by this that you are seeking our advice on the question as to whether the Registrar may be authorized to enter

into agreements on behalf of STL, even though funding for such agreements is still being held in a United Nations trust fund.

2. While STL is an international, intergovernmental organization separate from the United Nations, I understand that it does not have, at present, financial independence, since all contributions for STL made by donor States are currently held in a trust fund administered by the United Nations. United Nations financial regulation 4.14 and financial rule 104.3 provide that, unless otherwise authorized by the General Assembly, trust funds shall be administered in accordance with the United Nations Financial Regulations. This Office is not aware that the General Assembly has authorized the administration of the trust fund for STL other than in accordance with the United Nations Financial Regulations and Rules. Accordingly, all procurement activities relating to STL, including contracts concluded by the United Nations on behalf of STL, are governed by the relevant regulations and rules of the United Nations, in particular the United Nations Financial Regulations and Rules.

3. I further understand that the donor States are in the process of agreeing to transfer all the funds contributed to STL from the United Nations trust fund to a STL account administered under the STL Financial Regulations and Rules. Upon transfer of such funds, STL will effectively attain financial independence from the United Nations. Pursuant to regulation 1.4 of the STL Financial Regulations and Rules, "[t]he Registrar is responsible and accountable to the Management Committee for the effective and efficient financial administration of the Tribunal."

4. In light of the foregoing, as long as the contributions for STL are held in a United Nations trust fund, the Organization (the Controller) may delegate authority to the Registrar of STL to procure goods and services on behalf of the United Nations for STL. Under such an arrangement, the Registrar would have to conduct all procurement activities in accordance with the United Nations Financial Regulations and Rules. In addition, all the contracts concluded by the Registrar would necessarily have to be concluded on behalf of the United Nations. Therefore, once the funds have been transferred from the United Nations trust fund to STL, contracts concluded by the Registrar for STL on behalf of the United Nations would have to be assigned to STL. This Office is prepared to work with STL to develop the appropriate legal arrangements for such assignment of contracts.

5. Upon transfer of the funds from the United Nations trust fund to an account of STL, the issue of delegating authority to the Registrar to conduct procurement activities on behalf of the United Nations would be moot since the funds will be governed by the STL Financial Regulations and Rules and will no longer fall under the authority of the United Nations. As mentioned in paragraph 3 above, the Registrar will have full authority over these funds and he will be responsible and accountable to the Management Committee for the effective and efficient administration of these funds.

6. Legal complications may arise if the Registrar enters into contracts on behalf of the United Nations for STL, because these contracts will have to be assigned to STL once it has attained financial independence, and the United Nations may still bear some residual liability under such contracts. Nevertheless, there is no possibility, from a legal point of view, to authorize the Registrar to procure goods and services under STL Financial Regulations and Rules and/or to conclude contracts on behalf of STL as long as the funds are held in a United Nations trust fund. In order to avoid the problem of having to assign contracts

to STL upon transfer of the funds, the Registrar could defer entering into such contracts until the funds have been transferred to an account of STL.

12 December 2008

3. Other issues relating to United Nations peacekeeping operations

Note to the Under-Secretary-General for Peacekeeping Operations regarding the difference between the relocation and the repatriation of the personnel of the United Nations Mission in Ethiopia and Eritrea (UNMEE)

"Relocation" viewed as a temporary move to another location due to the security situation—"Repatriation" generally viewed in the United Nations context as a more permanent move back to a person's home country—Not within the authority of the Secretary-General to terminate or suspend the mandate of a mission, either legally or as a matter of substance—"Repatriation" viewed as implying the end of the mission—The move of peacekeeping personnel to other locations should be described as "relocation" to make it clear that the mission continues to exist—Termination of the Mission exclusively within the authority of the Security Council

1. This is in reference to your note of 22 February 2008 (received by our Office on 25 February) in which you request our urgent advice on the question as to the difference between the terms "relocation" and "repatriation", and the authority of the Secretary-General and the Security Council with respect to the two processes. You note that this issue has arisen in the context of having to move UNMEE peacekeeping personnel from an untenable situation in Eritrea pending a decision by the Security Council on the future of the Mission.

2. In our view the term "*relocation*" means a move to another location, which move may be temporary in nature. In the security context (see Field Security Handbook, paras. 5-16), "relocation" in the narrower sense means to relocate international staff (and spouses and eligible dependants) to alternative locations within the same country (para. 5.47 (b)); while, in the broader and more general and technical sense, it means to relocate international staff (and spouses and eligible dependants) to alternative locations in the country and/or to evacuate outside the country all non-essential international staff and their spouses and eligible dependants, as well as spouses and eligible dependants of essential international staff (paras. 5-16, heading (c), and para 5.47(b)&(c)).

3. The term "*repatriation*", as generally used in a United Nations context, particularly with respect to the appointment of staff members, means a move back to that person's home country, and connotes that the move is more permanent in nature. However, the term "repatriation" is referred to in article V, section 18 (f), of the 1946 Convention on the Privileges and Immunities of the United Nations ("the Convention"),[*] which provides "[O]fficials of the United Nations shall be given, together with their spouses and relatives dependent on them, the same repatriation facilities in time of international crisis as diplo-

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

matic envoys". Thus, in the Convention, it appears to be used in the sense of "evacuation" from the country.

4. As to the authority of the Secretary-General and the Security Council with respect to the two processes, the Secretary-General may take such measures as he considers necessary to ensure the safety and security of peacekeeping personnel. While the Secretary-General may of course repatriate individual United Nations staff within his authority under the United Nations Regulations and Rules, the Secretary-General does not have the authority to terminate or suspend the mandate of the Mission, either legally or as a matter of substance, contrary to the applicable decision of the Security Council. In its resolution 1798 (2008), the Security Council, "having considered the report of the Secretary-General of 23 January 2008 (S/2008/40)" (in which the Secretary-General stated in paragraph 45 "[i]n light of the restrictions on UNMEE operations, including the stoppage of fuel supplies to run the Mission, I recommend a one month technical roll over of the mandate of UNMEE"), decided in operative paragraph 1 "to extend the mandate of UNMEE for a period of six months, until 31 July 2008". If the Secretary-General were to decide to "repatriate" the members of UNMEE, this implies the end of the Mission and would appear to be inconsistent with the terms of Security Council resolution 1798 (2008).

5. As the mandate of UNMEE has not yet expired and the Security Council has not requested UNMEE to withdraw from Eritrea, it is our view that the Secretary-General should use the term "relocation" when describing the move of peacekeeping personnel including troops and staff members from Eritrea to other locations. The term "relocation", rather than "repatriation" makes it clear that UNMEE still exists, but that mission personnel are temporarily being moved to another location, in view of the current security situation jeopardizing the safety and security of UNMEE personnel.

6. With regard to the military contingents, from the draft special report of the Secretary-General to the Security Council on the relocation of UNMEE, we understand that the contingency plan had envisioned a relocation for a limited duration to Asmara and Assab but due to a lack of adequate facilities as well as logistical difficulties in further relocation within Ethiopia, the military personnel that have already regrouped in Asmara and Assab, would be relocated to their home countries, pending a final decision by the Security Council. We note that this relocation would not include some military personnel from the various troop contingents who are needed to secure contingent-owned equipment. While safety and security concerns as well as logistical issues might obligate this relocation, a return of troop contingents back to their home countries could give rise to concerns that this is indeed a repatriation of troops away from the mission. Hence it should be clear that these relocations, even though back to the home country, are temporary pending a final decision of the Security Council.

7. With regard to military observers (which number around 120 for UNMEE), we note that, according to the draft special report referred to above, only those military observers whose tours of duty are to be completed in the near future will be repatriated immediately, while the remainder of the observers will be reassigned. We also note that the Secretary-General has the authority to repatriate those personnel as they are considered "experts on mission" with contracts with the Organization. Therefore, in view of the operational limitations resulting from the current situation, it is within the authority of

the Secretary-General to repatriate those military observers as the Organization would no longer need their services.

3 March 2008

4. Personnel questions

(*a*) Interoffice memorandum to the Legal Support Office, Bureau of Management, United Nations Development Programme (UNDP), regarding proposed changes to the Constitution of the UNDP/UNFPA/UNOPS Staff Association

Consistent practice of the Administration to limit review of statutes prepared by staff unions or associations solely to their electoral provisions—Staff associations are established for the purpose of affording representation to staff members only—Participation of non-staff personnel as associate members with observer status would not be in conformity with Staff Regulation 8.1 (b) and Staff Rule 108.1—Period of continuous administrative release of staff representatives limited to four years—Obligation of staff associations to afford equitable representation to all staff members cannot be subject to the payment of dues

1. I refer to your memorandum, dated 26 December 2007, seeking advice on the validity of certain proposed changes to the Constitution of the UNDP/UNFPA/UNOPS Staff Association ("Constitution"). You requested our views on (i) whether non-staff personnel may participate in the UNDP/UNFPA/UNOPS Staff Association ("Staff Association") as associate members with observer status; (ii) whether a staff representative may serve three consecutive terms on the Staff Council, which is the principal organ of the Staff Association; and (iii) whether the payment of membership dues may be established as a prerequisite for voting.

2. At the outset, we note that it has been the consistent practice of the Administration to limit its review of statutes prepared by staff unions or associations solely to their electoral provisions, which are approved by the Secretary-General when they are fully consistent with the requirements set out in staff regulation 8.1(b) and staff rule 108.1. We have not conducted a review of all the proposed changes in the Constitution and have confined our comments below to the three issues identified in your memorandum.[1]

3. With respect to the participation of non-staff personnel in the Staff Association, the Office of Legal Affairs (OLA) has previously advised that staff members may not continue as members of staff representatives bodies beyond the termination of their contracts, nor may consultants participate in elections for staff representatives bodies, on the grounds that such practices would be inconsistent with staff regulation 8.1(b) and staff rule 108.1 which apply only to staff members. For these same reasons, we consider that the participation of non-staff personnel in the Staff Association as associate members with observer status, as provided for in article 4(1) of the Constitution, would not be in conformity with staff regulation 8.1(b) and staff rule 108.1 because these provisions envisage

[1] We note, however, that it is incorrect to list the Secretary-General as a staff member in article 22 of the draft Constitution.

that staff representative bodies are established for the purpose of affording representation to staff members only.

4. On the issue of whether article 6(2)(d) of the Constitution may allow for a Staff Council member to serve three consecutive terms, it is recalled that a recommendation by management to impose term limits for staff representatives was reflected in the Secretary-General's report entitled "Reasonable time for staff representational activities" of 10 May 1996 (A/C.5/50/64). Following its consideration of this report, the General Assembly decided, in resolution 51/226 of 3 April 1997 on "Human resources management", to limit the period of continuous release of staff representatives to a maximum of four years. As staff representatives serving on the Staff Council are not on administrative release, there would be no legal basis to object to the proposed length of service for Staff Council members provided for in Article 6(2)(d).

5. As for limiting participation in and assistance by the Staff Association to "dues paying members", as set out in article 4(4) of the Constitution, OLA has consistently advised in the past that under staff regulation 8.1(b), staff representative bodies are required to "afford equitable representation to *all* staff members" (emphasis added) and this obligation cannot be subject to the payment of dues. In order to comply with staff regulation 8.1(b), the Staff Association must extend membership and related rights to all staff members irrespective of whether they pay membership dues.

4 June 2008

(*b*) Interoffice memorandum regarding rights of staff representatives

Duties and obligations of staff members set out in article 1 of the Staff Regulations and chapter 1 of the 100 series of the Staff Rules—Duties and obligations apply to all staff members, regardless of status as staff representatives—The exercise of freedom of expression and association does not exempt staff representatives from observing the duties and obligations incumbent upon staff members—Staff representatives are not exempt from the obligations to report misconduct and to comply with confidentiality provisions applicable to investigations

1. I refer to your memorandum requesting advice on whether the members of a Staff Council and/or its chairperson enjoy "special rights" different from the rights enjoyed by other staff members, in particular with regard to freedom of speech and the obligation to report allegations of misconduct.

. . .

Analysis

4. At issue is whether staff representatives are exempt from the duties and obligations applicable to other staff members, including the obligations to report misconduct and to comply with the confidentiality provisions applicable to investigations.[1] In this connection, it

[1] The obligation to report misconduct is set out in staff regulation 1.2 (c) which stipulates that "[s] taff members must respond fully to requests for information from staff members and other officials of the Organization authorized to investigate possible misuse of funds, waste or abuse." The requirement to maintain confidentiality is provided for in paragraph 5.11.2 of the IOM/FOM 54/2005.

is also relevant to consider whether in exercising their freedom of expression or association, staff representatives are exempt from the normal duties and obligations of staff members.

Whether staff representatives are exempt from staff duties and obligations

5. The applicability of staff duties and obligations to staff representatives are expressly addressed in ST/AI/293 on "Facilities to be provided to staff representatives". Paragraph 2 of ST/AI/293 states that "[s]taff representatives shall have the *same rights, duties, obligations and privileges as other staff members* of the United Nations under the Staff Regulations and Rules" (emphasis added).

6. We also note that the duties and obligations of staff members are set out in article I of the Staff Regulations and chapter I of the 100 series of the Staff Rules. In the formulation of these provisions, there was considerable discussion about the appropriateness of creating special provisions applicable to staff representatives. Ultimately, at the initiative of the staff representatives, the Staff-Management Coordination Committee recommended that all references to the staff representatives in these provisions should be deleted and reviewed in the context of future amendments to article VIII of the Staff Regulations and chapter VIII of the 100 series of the Staff Rules, which address staff relations.[2] This recommendation was endorsed by the Secretary-General and reflected in his report (A/52/488/Add.l), which was adopted by the General Assembly in its resolution 52/252 of 8 September 1998.

7. To date, no further revisions have been made to article VIII of the Staff Regulations and chapter VIII of the 100 series of the Staff Rules to establish any special rights of staff representatives. Accordingly, there is no legal basis to assert that staff representatives are exempt from complying with the duties and obligations of staff members.

8. The applicability of duties and obligations to all staff members, regardless of their status as staff representatives has also been recognized by the United Nations Administrative Tribunal (UNAT). In Judgement No. 855, Lombardi (1997), UNAT stated that it "is quite aware that, in discharging their functions, staff representatives remain bound by the obligations incumbent on all staff members of international organizations." (*Lombardi*, paragraph III).

Whether in exercising their freedom of expression or association, staff representatives are exempt from staff duties and obligations

9. In support of the argument that it was inappropriate for the Office of the Inspector General to remind him of his obligation to report misconduct, the Chairman cited Judgment No. 911 of 30 June 1988 of the International Labour Organization Administrative Tribunal (ILOAT), which noted that "a staff association enjoys special rights that include broad freedom of speech and the right to take to task the administration of the organisation whose employees it represents." Furthermore, ILOAT has also declared that "[f]reedom of association means that there must be freedom of discussion and of debate." (ILOAT Judgment No. 274 of 12 April 1976). From these cases, the Chairman appeared to

[2] See paragraph 2 of A/52/488/Add.l ("Proposed United Nations Code of Conduct").

infer that in exercising their freedoms of expression and association, staff representatives are exempt from the normal duties and obligations incumbent on staff members.[3]

10. We do not agree that the case law of the ILOAT provides a basis for such an expansive interpretation of the implications of the freedom of expression and association, even when exercised by staff representatives. We note that Judgment No. 911, on which the Chairman relies, itself recognizes that there are limits to freedom of expression. It is important to view the quotation cited by the Chairman in its proper context; the relevant part of the decision states in full as follows:

> "According to precedent a staff association enjoys special rights that include broad freedom of speech and the right to take to task the administration of the organisation whose employees it represents. *Like any other freedom, however, freedom of speech has its bounds. A staff association may not resort in public to action that impairs the dignity of the international civil service*, save that the degree of discretion required of it is not as great as is expected of an individual staff member: both law and practice allow it wider freedom of speech and only gross abuse will be inadmissible."[4] (Emphasis added).

11. The principle that freedom of expression must respect certain bounds was reiterated in ILOAT Judgment No. 2227 of 16 July 2003, in which ILOAT recognized that actions to restrict such freedom are permissible "where there is gross abuse of the right to freedom of expression or lack of protection of the individual interests of persons affected by remarks that are ill intentioned, defamatory or which concern their private lives."[5] Moreover, in its Judgment No. 1061 of 29 January 1991, ILOAT examined a case in which a staff representative was dismissed after criticizing the treatment of Food and Agriculture Organization of the United Nations (FAO) staff in an unauthorized radio interview. ILOAT agreed that the radio interview by the staff representative violated the staff rule requiring staff members to obtain prior approval before issuing public statements to the press and held that "[s]taff representatives are not exempted from observance of the rules by reason of holding office in the Union."[6]

12. Similarly, UNAT has also recognized that where staff representatives "have overstepped the bounds of the legitimate exercise of freedom of association," the Administration may be entitled to "react strongly." (*Lombardi*, *ibid*, paragraph II). The *Lombardi* judgement concerned a staff representative who was subject to a written reprimand because a number of staff unions and associations based in Geneva sought to disrupt a salary survey conducted by the International Civil Service Commission by writing letters to local employers in Geneva urging them to refrain from participating in the survey. UNAT

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[3] While the case law of the ILO Administrative Tribunal is not binding on the United Nations, it has provided important guidance for the United Nations Administrative Tribunal. Accordingly, we have examined the case law of the ILO Administrative Tribunal in this section.

[4] ILOAT Judgment No. 911, paragraph 8.

[5] ILOAT Judgment No. 2227, paragraph 7. See also paragraph 3 of ILOAT Judgment No. 1061 of 29 January 1991 ("Freedom of speech must be protected particularly for officers of a staff association, so that they are not hampered in their task of representing the membership when in dispute with the Administration. But there are limits on such freedom. A staff representative's public statements must not impair the dignity of the international civil service: indeed he is under a special obligation not to abuse his rights by using expressions or resorting to behaviour incompatible with the decorum appropriate to his status both as an international civil servant and as an elected staff representative.")

[6] ILOAT Judgment No. 1061, *ibid*, paragraph 4.

ultimately found in favour of the staff member, on the grounds that it was inappropriate for the Organization to punish an individual for the collective actions of a number of staff associations. Nevertheless, UNAT recognized that staff representatives "remain bound by the obligations incumbent upon all staff members of international organizations" (*ibid*, paragraph III), even though the case involved the exercise by staff representatives of their freedom of association and expression.

13. In view of the foregoing, freedom of expression does not override the right of an individual to protection from defamation. Where allegations of corruption by senior . . . officials have been made, we consider that investigations to establish the veracity of such allegations are entirely appropriate and cannot be seen as incompatible with freedom of expression. Moreover, according to the ILOAT, the exercise of freedom of expression does not exempt staff representatives from observing the duties and obligations incumbent on staff members. Similarly, the UNAT has ruled that the exercise of freedom of association does not exempt staff representatives from observing staff duties and obligations. Accordingly, staff representatives are not exempt from the obligations to report misconduct and to comply with the confidentiality provisions applicable to investigations.

Conclusion

14. From our review of the applicable Staff Regulations and Rules and administrative issuances, as well as the case law of ILOAT and UNAT, we consider that staff representatives do not enjoy an exemption from the duties and obligations applicable to staff members either by virtue of their status as staff representatives or in connection with the exercise of their freedoms of expression and association. Accordingly, staff representatives are not exempt from the obligations to report misconduct and to comply with the confidentiality provisions applicable to investigations.

4 June 2008

5. Procurement

(*a*) Interoffice memorandum to the Headquarters Committee on Contracts (HCC) regarding the implementation of its recommendation in connection with financial rule 105.15(c)

Procurement process—Serious procedural irregularities in procurement exercise—Recommendation by the HCC that all bids be cancelled and that Procurement Service be authorized to negotiate directly with three technically compliant vendors—Direct negotiation pursuant to Financial Rule 105.15(c) does not constitute another request for a best and final offer (BAFO)

1. I refer to your memorandum, dated 18 September 2007, requesting advice with regard to the Procurement Service's (PS) opinion concerning the implementation of a HCC recommendation, from its meeting HCC/07/48 that was held on 5 June 2007. I also refer to the follow-up discussions between you and members of this Office concerning this matter. The subject of this matter was a presentation of HCC concerning a proposed contract to [company 1] for the provision of consultancy services relating to the development of an Enterprise Risk Management Programme and Internal Control to the United Nations, in

support of the Office of Programme Planning, Budget and Accounts (OPPBA), in the total net amount of US$ [sum]. As set forth in paragraph 3.17 of the HCC minutes for that meeting, HCC recommended that the Controller reject all bids and authorize PS to negotiate a contract under financial rule 105.15. According to PS, however, such a recommendation was tantamount to authorizing PS to obtain yet another best and final offer ("BAFO") from proposers. PS notes that section 11.6.8 (2) of the Procurement Manual only allows one BAFO to be conducted during the course of any procurement exercise. Thus, the question is whether the HCC recommendation to reject all bids and to negotiate a contract directly with the three technically compliant vendors would result in more than one BAFO being undertaken in the procurement exercise.

2. As an initial matter, we note that, with respect to this procurement exercise, the issue is effectively moot, since the contract was re-bid by PS and was subsequently submitted to the HCC, the majority of which, at the HCC meeting of 8 August 2007, recommended that it be awarded to [company 2]. You have, nonetheless, requested legal advice concerning this issue for future reference. Although the legal issue in this case is not particularly complex, the factual background that raised this issue was rather convoluted:

3. According to the minutes of the HCC meeting held on 8 August 2007, as well as the minutes of the HCC meeting held on 5 June 2007, the case in question was initially submitted for the HCC review on 5 June 2007. As explained in the minutes of the HCC meeting of 5 June 2007, three vendors were found to be technically compliant: [company 2], [company 1] and [company 3]. The commercial evaluation of the three technically compliant proposals determined that the lowest bid came from [company 2] (US$ [sum]), followed by [company 1] (US$ [sum]) and [company 3] (US$ [sum]). [Company 2] received the highest overall combined, weighted-score (83.55 points). However, the estimated person-days proposed by [company 2] for the provision of the proposed consulting services, in the amount of 369 person-days, differed significantly from the person-days proposed by [company 1], 570, and [company 3], 607. PS and OPPBA stated that the commercial proposal from [company 2] was the lowest bid because of the firm's low estimate of person-days for the project. According to the minutes of the HCC meeting, of 5 June 2007, PS and OPPBA were of the view that the resources and level of input proposed by [company 1] and [company 3] were more in line with the size and scope of the project. Further, PS and OPPBA expressed their concern that there was a risk that [company 2] would seek to recover additional costs from the United Nations after commencing the services. In light of the foregoing considerations, PS and OPPBA concluded that it would not be in the best interest of the Organization to award the contract to [company 2].

4. For reasons that were unclear to the HCC (see minutes of HCC/07/48, of 5 June 2007, paragraph 3.13), and that are likewise unclear to this Office, PS approached both [company 1] and [company 3] for a BAFO instead of asking all three vendors, including [company 2], to refine their offers for completing the project. According to the post-BAFO revised scores for both the technical and the financial evaluation, even after the BAFO, [company 2] still retained the highest overall score of 83.55 points compared to 71.17 points for [company 1] and 70.33 points for [company 3]. PS also affirmed, upon request by HCC in its meeting of 5 June 2007, that the Organization could hold [company 2] to the proposed price. However, HCC was of the opinion that there were "serious procedural irregularities" in the procurement exercise (see *ibid*., paragraph 3.14) and that, accordingly, the requirement should have been re-bid. However, having been advised by PS that

urgent operational requirements made re-bidding not a feasible option, HCC instead recommended that all bids be cancelled and that, pursuant to financial rule 105.15 (c), PS be authorized to negotiate with the three technically compliant vendors.

5. As explained in annex II of the minutes of the HCC meeting of 8 August 2007, PS, however, issued a new request for proposal (RFP) to all five vendors that had submitted proposals in response to the previous RFP. It appears that during the course of the technical evaluation for the new RFP, the proposal submitted by [company 2] was considered to be too high a risk because of the insufficient level of staff resources that it had proposed. However, [company 2] still received the highest score. It is not clear from the records provided to this Office why [company 2] would still be evaluated with the highest score in the technical and commercial evaluation despite the significant concerns raised by PS. Since PS considered the results of the evaluation to be unrealistic, PS undertook a second combined evaluation and decided that [company 1]'s proposal was the most responsive to the requirements set forth in the solicitation documents and offered a best-value-for-money outcome.

6. In conjunction with OPPBA, PS sought the HCC recommendation to award the contract to [company 1]. According to the minutes of the HCC meeting of 8 August 2007, the HCC noted a number of serious concerns regarding the actions taken by PS. Specifically, a majority of the members of HCC stated that they did not support PS recommendation to award the contract to [company 1] in the amount of US$ [sum]. Rather, the majority recommended that the award be made to [company 2] in the amount of US$ [sum].

7. Your question is whether the HCC original recommendation to reject all bids and to negotiate a contract directly with the three technically compliant vendors could be seen as constituting a second BAFO. Section 11.6.8 (2) of the Procurement Manual provides that, "[i]n order to ensure the integrity and fairness of the process, the Procurement Officer shall not conduct more than one round of Best and Final Offers and shall ensure that the original price proposals and any other price/cost/financial related information obtained during the commercial evaluation of all proposals remain confidential." While a BAFO serves to refine the pricing in an existing solicitation, the recommendation from HCC to directly negotiate a contract under financial rule 105.15(c) concerns an exception to the regular formal solicitation process. Financial rule 105.15(c) provides that the Organization may reject bids or proposals for a particular procurement action, recording the reasons for such rejection in writing. In such cases, "the Under-Secretary-General for Management shall then determine whether to undertake a new solicitation, to directly negotiate a procurement contract pursuant to rule 105.16 or to terminate or suspend the procurement action." Pursuant to rule 105.16, which covers "exceptions to the use of formal methods of solicitation", the Under-Secretary-General for Management may determine for a particular procurement action that using formal methods of solicitation is not in the best interests of the United Nations, and, in such circumstances, may award a procurement contract, either on the basis of an informal method of solicitation or on the basis of a directly negotiated contract, to a qualified vendor. Such direct negotiations under financial rule 105.15(c), therefore, cannot be considered as constituting another BAFO.

15 January 2008

(*b*) Interoffice memorandum to the Assistant Secretary-General, Controller, regarding the proposal to suspend vendors identified in the fifth and final report of the Independent Inquiry Committee into the United Nations Oil for Food Programme

Suspension of vendors suspected of having engaged in corrupt practices—Immediate suspension of vendors having admitted that allegations are true—Suspension for six months of remaining vendors to allow for an investigation to confirm allegations—Allegations must be confirmed by substantial and documented evidence—Decision to suspend vendors to be taken by the Assistant Secretary-General, Controller—Action taken must be in accordance with procedures set forth in Procurement Manual—Role of the Vendor Review Committee, rather than the Office of Legal Affairs, to review evidence regarding alleged corrupt practices

1. I refer to your memorandum, dated 6 December 2007, and which I received on 14 December 2007, informing me of your policy decision to suspend the 115 companies registered in the United Nations Vendor Database that were also identified in the Fifth and Final Report of the Independent Inquiry Committee (IIC Report) into the United Nations Oil for Food Programme (Programme) as having engaged in corrupt practices with regard to the Programme. In that memorandum, you stated that eight (8) of those 115 companies would be immediately suspended because, in written responses to requests by the Procurement Service (PS) to explain the IIC allegations, those eight companies had admitted to PS that the IIC allegations were true. You also stated that the remaining 107 companies would be suspended for six months in order to allow this Office to conduct an investigation in order to confirm that the IIC allegations against those companies provided substantial and documented evidence of the companies' having engaged in misconduct so that the companies could be suspended or removed from the United Nations Vendor Database in accordance with the standards for suspension or removal set forth in the Procurement Manual. I also refer to your memorandum, dated 7 January 2008, and which I received on 21 January 2007, by which you sought the review of the text of a draft letter pursuant to which you would inform 107 of those companies of your decision to suspend them from the United Nations Vendor Database for six months pending such review.

2. As an initial matter, I note that the decision to suspend the 115 companies from the United Nations Vendor Database is a policy decision that, in accordance with the procedures for the removal or suspension of vendors set forth in subsection 7.12.2 of the Procurement Manual, is for you to make. As was previously stated in my memorandum of 27 July 2007, this Office agrees that appropriate action should be taken against companies in respect of whom, in accordance with the procedures set forth in the Procurement Manual for suspension or removal from the United Nations Vendor Database, the Vendor Review Committee (VRC) of PS has compiled substantial and documented evidence of misconduct. The only concerns that I had previously raised and that I wish to reiterate are that such procedures be followed so that the Organization can avoid criticism and potential claims for having acted arbitrarily.

3. With respect to the eight companies who admitted to PS that the IIC allegations were true, if the VRC and you are satisfied that such admissions constitute the substantial and documented evidence required under subsection 7.12.2 of the Procurement Manual

for the suspension or removal of those eight companies from the United Nations Vendor Database, then this Office considers this to have been resolved within your purview and has no further comments.

4. With respect to the remaining 107 companies, your memorandum, dated 7 December 2007, states that your decision to suspend those companies for six months "should give the Office of Legal Affairs the opportunity to confirm that the IIC Report evidence is substantiated and documented, and provide operational guidance to reinstate the suspect vendors if warranted." First, I note that sub-section 7.12.1 of the Procurement Manual provides that it is the role of the Vendor Review Committee of PS, and not of this Office, to "review all substantial and documented evidence . . . taking into account the criteria listed in 7.12.2" when deciding whether to suspend or remove companies from the United Nations Vendor Database. Accordingly, your proposal to enlist this Office to conduct such a review does not conform to the requirements of the Procurement Manual that the VRC conduct such review. Second, it would be inappropriate for this Office to conduct such a review, because if one of the companies were to assert a claim concerning its suspension or removal, it could present a conflict for this Office to defend the Organization with respect to a process in which it was directly responsible for the outcome being challenged.

5. With respect to the review of the IIC evidence, I recall that, in his note of 27 August 2007, the Chairman of the PTF asserted that the IIC in fact had made specific and individual findings of wrongdoing concerning the 115 companies registered in the United Nations Vendor Database and that those findings were based on actual records from banks, Government of Iraq ministries, or the companies themselves. If that is the case, the VRC should have no difficulty reviewing the specific evidence compiled by the IIC for each company, instead of simply relying on the summary findings set forth in the IIC Report, in order to establish the substantial and documented evidence warranting the companies' suspension or removal from the United Nations Vendor Database. I would imagine that the Chairman of the PTF could lend valuable assistance to PS and the VRC in carrying out such a review.

6. As I stated in my memorandum of 27 July 2007, such company-specific review of the IIC evidence is precisely the procedure that the VRC must follow under subsection 7.12.2 of the Procurement Manual when recommending the suspension or removal of the companies. In the proposed draft letter to the 107 companies that was attached to your memorandum of 7 January 2008, you state that the decision to suspend companies from the United Nations Vendor Database "for a minimum period of six months to allow the United Nations to conduct further due diligence with regard to (name of company's) participation in the Oil for Food Programme." This Office agrees with that formulation of your decision to suspend the vendors pending the VRC further review of the evidence compiled by the IIC. Consequently, this Office has no comments on the draft text.

25 January 2008

(*c*) Interoffice memorandum to the Headquarters Committee on Contracts (HCC) regarding advice on financial rule 105.15(c)

Recommendation by HCC that all proposals in a procurement exercise be rejected pursuant to financial rule 105.15(c)—After such rejection, a new solicitation can

BE UNDERTAKEN, THE PROCUREMENT ACTION CAN BE SUSPENDED OR TERMINATED, OR A CONTRACT CAN BE NEGOTIATED DIRECTLY WITH THE PARTIES—THE UNITED NATIONS CANNOT SEEK TO OBTAIN A BEST AND FINAL OFFER (BAFO) ON A PROPOSAL THAT HAS ALREADY BEEN REJECTED

1. I refer to your memorandum of 20 February 2008, requesting advice with regard to the Procurement Service's (PS) use of requests for best and final offers (BAFOs).

2. You have indicated that from time to time, HCC will recommend, pursuant to United Nations financial rule 105.15(c), that the Controller reject all bids/proposals and either authorize the Procurement Service to directly negotiate a procurement contract pursuant to financial rule 105.16, or undertake a new solicitation. Thus, the question is whether it is appropriate for the United Nations to request proposers to submit BAFOs for their pricing proposals when a decision has been taken under financial rule 105.15 (c) to reject all bids or proposals and, in accordance with that rule, to directly negotiate a procurement contract.

3. Financial rule 105.15 (c) provides that "[t]he Under-Secretary-General for Management may, in the interest of the United Nations, reject bids or proposals for a particular procurement action, recording the reasons for rejection in writing." The Rule further provides that, after rejecting the bids or proposals, "[T]he Under-Secretary-General for Management shall then determine whether to undertake a new solicitation, to directly negotiate a procurement contract pursuant to rule 105.16 or to terminate or suspend the procurement action." Thus, if a decision has been taken to reject bids or proposals for a particular procurement action, three options are available under the rule. First, an entirely new solicitation exercise can be undertaken. Second, the entire procurement action can be suspended or terminated. Third, a procurement contract can be directly negotiated in accordance with financial rule 105.16. In case of the first two options, the procurement exercise is effectively ended, so the question of seeking BAFOs from vendors whose bids or proposals have been rejected is moot. Only in the case when the third option is exercised and efforts are undertaken to directly negotiate a procurement contract pursuant to financial rule 105.16 would the question arise as to whether it is appropriate to seek BAFOs from vendors with whom the Organization is negotiating.

4. In this regard, financial rule 105.16 (b) provides that, when a determination has been made that formal methods of solicitation of goods or services are not in the best interest of the Organization, including when bids or proposals have been rejected pursuant to financial rule 105.15(c), a procurement contract may be awarded, "either on the basis of an informal method of solicitation or on the basis of a directly negotiated contract, to a qualified vendor whose offer substantially conforms to the requirement at an acceptable price." In effect, if all bids or proposals have been rejected, the Organization may negotiate directly with one or more vendors to obtain the Organization's requirement at an acceptable price.

5. The question then is whether a BAFO can even be conducted in such circumstances. The use and procedures of BAFOs are described in section 11.6.8 of the Procurement Manual (November 2007, Rev. 04), which states, in relevant part, that:

> "(1) After establishing the competitive range of [the] most responsive proposers and opening the price proposals, the Procurement Officer may decide, as an exception, and upon clearance of the respective Section Chief or Chief of Procurement or (CPO), to engage in discussions with a sufficient number (no less than two) of technically qualified proposers

that have a reasonable chance for award, in order to obtain Best and Final Offers (BAFO). Sound professional judgement should be used in order to make this determination."

Thus, as set forth in the Procurement Manual, BAFOs which, as you know, only apply to proposals, also only apply to existing and still active proposals. It follows, therefore, that the United Nations cannot seek to obtain a BAFO on a proposal that has already been rejected. Instead, and in accordance with financial rule 105.15 (c) and 105.16 (b), in such a case, PS should be directly negotiating a procurement contract to obtain the Organization's requirement at an acceptable price.

19 March 2008

B. Legal opinions of the Secretariats of intergovernmental organizations related to the United Nations

1. International Labour Organization[1]

Opinion concerning the participation by the representative of the United Nations Interim Administration Mission in Kosovo at the International Labour Conference[2]

Participation by the representative of the United Nations Interim Administration Mission in Kosovo (UNMIK) at the International Labour Conference—Representative also Minister of the Provisional Institutions of Self-Government of Kosovo—Accreditation signed by the Special Representative of the Secretary-General—No legal impediment to participation

The government delegate of Serbia raised a point of order asking that Mr. Nenad Rasic, listed as representative of United Nations Interim Administration Mission in Kosovo (UNMIK), be removed from the list of speakers, arguing that Mr. Nenad Rasic was Minister of Labour and Social Welfare of the Provisional Institutions of Self-Government in Kosovo and that, consequently, he could not represent the UNMIK administration. The Legal Adviser to the Conference, asked by the President of the Conference to address such point of order, gave the following opinion:

"Mr. Nenad Rasic has been regularly accredited as a member of the delegation of the United Nations Interim Administration Mission in Kosovo (UNMIK) to this 97th Session of the International Labour Conference. The accreditation has been signed by Mr. Joachim Rücker, Special Representative of the Secretary-General of the United Nations, and by the same letter, dated 14 May 2008, Mr. Rücker conveyed to the Director-General of the ILO and Secretary-General of this Conference the request for Mr. Rasic to take the floor in this plenary. This is the situation, so the Office does not see any legal impediment to Mr. Rasic taking the floor."

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[1] A number of Legal Opinions were rendered during the Conference on specific procedural issues and the interpretation of the Standing Orders as well as the possible effects of amendments to texts under discussion. Only one Legal Opinion has been selected for reproduction here. The others can be found in the records of the Conference.

[2] Provisional Record 17, Tenth meeting, Reports of the Chairperson of the Governing Body and the Director-General. Available at http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_094145.pdf.

2. United Nations Industrial Development Organization

(*a*) Interoffice memorandum regarding United Nations Industrial Development Organization (UNIDO) Headquarters Agreement – Import privileges of staff members holding a [State] residency permit

Import privileges of staff member holding a resident permit—Interpretation of Headquarters Agreement—Functional privileges and immunities attached to UNIDO officials—Privileges and immunities apply to all staff who are not nationals of [State] or stateless persons resident in State—Residency status in [State] does not limit or reduce functional privileges and immunities enjoyed by UNIDO staff

1. This is with reference to your memorandum, dated [. . .], regarding the denial by the [Ministry of State] of import privileges to a non-[State national] staff member in the General Service category holding a [State] residency permit. According to your memorandum, this is the first such case, representing an apparent change in policy on the part of the [State] authorities.

2. You have requested our advice concerning the legitimacy of the foreign ministry's interpretation of the Headquarters Agreement and on further action in case their position contradicts the provisions of the Headquarters Agreement.

3. The legal question to be considered is whether a non-[State national] staff member in the General Service category holding an [State] residency permit enjoys import privileges under the Headquarters Agreement. In other words, does the Headquarters Agreement restrict the import privileges normally granted to non-[State national] staff members in the General Service category when they have residency status in [State]?

4. Section 37 of the Headquarters Agreement lists the functional privileges and immunities attached to officials of UNIDO. These include certain duty-free imports described in section 37, paragraph (o). In its introductory paragraph, section 37 states that "Officials of the UNIDO shall enjoy within and with respect to [State] the following privileges and immunities. . . . ". Section 37 therefore applies to officials of all ranks. It draws no distinction between staff members based on their residency or other status under national law.

5. Section 38 of the Headquarters Agreement stipulates that staff members of the rank of P-5 and above are granted diplomatic privileges and immunities, provided they are not [State] nationals or stateless persons resident in [State]. The diplomatic privileges and immunities are additional to the functional privileges and immunities listed in section 37. Although section 38 is not applicable to General Service staff members, it is noteworthy that it does not mention persons who are residents of [State] but only [State] nationals and stateless persons resident in [State].

6. Section 39 of the Headquarters Agreement provides, in paragraph (a), that [State] nationals and stateless persons resident in [State] enjoy only the privileges and immunities set out in the Convention on the Privileges and Immunities of the United Nations of

1946,[*] together with tax exemption on pensions and access to the Commissary. Except for stateless persons resident in [State], section 39, paragraph (a), does not refer to persons who are residents of [State]. As a consequence, section 39 does not, either by its terms or by implication, limit or reduce the functional privileges and immunities granted under section 37 to staff members who have residency status in [State].

7. In light of the above, this Office has consistently held the view that the privileges and immunities listed in section 37 of the Headquarters Agreement are granted in their entirety to all officials of UNIDO, including officials holding residency in [State], but excluding [State] nationals and stateless persons resident in [State].

8. Accordingly, there is no basis under the Headquarters Agreement for denying the import privileges specified in section 37, paragraph (o), to non-[State national] General Service staff members because they are residents of [State].

16 January 2008

(*b*) Interoffice memorandum regarding limitations on earnings of UNIDO retirees re-employed by the Organization

Authority of Director-General to review and change the ceiling imposed on annual earnings of retirees re-employed by the Organization—Administrative instruction No. 9, addendum 2—The ceiling is not the product of a decision or recommendation by the International Civil Service Commission and hence is not a common system standard—Reservations expressed by the General Assembly and the Advisory Committee on Administrative and Budgetary Questions regarding the practice of re-employing retirees—Legal obligations under the 1985 Agreement between the United Nations and UNIDO—Need to consider, for any review of the ceiling, relevant statistics as well as relevant policy aspects including financial effects of a possible increase of the limit, succession planning, careers of current staff and needs of the Organization—a change should only be introduced for compelling policy reasons in the interests of the Organization, and should follow prior consultations with the United Nations

1. This memorandum is in response to the request of the Joint Advisory Committee (JAC) for a legal opinion concerning the limitation on earnings of retired former staff members. . . .

2. The question to be considered is whether the Director-General has the authority to review – and, presumably, to change – the limit or ceiling of US$ 22,000 imposed on the annual earnings of retirees who are re-employed by the Organization. This memorandum considers the rules establishing the limit, the policy objectives involved, and relevant provisions of the 1985 Agreement between the United Nations and UNIDO. In summary, my conclusions are that the Director-General could change the limit, but only for compelling policy reasons in the interests of UNIDO, and following prior consultations with the United Nations.

3. The Director-General's administrative instruction No. 9, addendum 2, dated 25 March 2002, contains the framework for the recruitment and management of consult-

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

ants and short-term experts by UNIDO. Paragraph 12 (a) of the administrative instruction limits the annual emoluments of retired former staff members in the following terms:

> "12. The Director, Human Resources Management Branch, will be responsible for all additional authorizations, as defined below.
>
> (a) The appointment of UNIDO or common system organizations' retirees. When approved, and following the spirit of General Assembly Decision 49/222B [*i.e.,* resolution A/RES/49/222B], former UNIDO or UN staff members in receipt of a pension benefit from the UNJSPF can only be hired for less than six months in any calendar year. *In addition, their earnings should not exceed US$ 22,000 during the same period.* UNIDO retirees cannot be engaged as consultants during the first three months following their separation from service." (Emphasis added).

4. The above rule is not the product of a decision or recommendation of the International Civil Service Commission and is hence not a common system standard. It is based instead on the policy followed by the United Nations, as the reference to General Assembly resolution 49/222B reveals. In resolution 37/237 of 21 December 1982, the General Assembly initially set a monetary limit of US$ 12,000 per calendar year on the emoluments of former staff members in receipt of a pension benefit from the United Nations Joint Staff Pension Fund (UNJSPF). In order to take into account inflation since 1982, the General Assembly decided in 1996 to raise that limit to US$ 22,000 per calendar year (except for language-service staff, for whom a higher limit was set). The General Assembly also decided that no pension-drawing retiree may be re-employed by the United Nations at a higher level than that reached at the time of separation, and that a retiree may not be paid at a level higher than a regular staff member carrying out the same function.

5. The restrictions determined by the General Assembly, including the monetary ceiling of US$ 22,000 per calendar year, have been promulgated most recently in Administrative Instruction ST/AI/2003/8.[*] In terms of section 6.2 of ST/AI/2003/8/Amend.1, effective 1 April 2006, "travel costs, daily subsistence allowance and other per diem payments" are not included in the emoluments subject to the limit of US$ 22,000 per calendar year.

6. In the United Nations, the monetary ceiling of US$ 22,000 on earnings of retired former staff members should be seen in the context of reservations regarding the practice of re-employing retirees, which have been expressed at regular intervals by the General Assembly and the Advisory Committee on Administrative and Budgetary Questions (ACABQ).

7. For example, in resolution 59/266, adopted on 23 December 2004, the General Assembly noted with concern the increased use of retired former staff members in substantive areas and in decision-making positions. The General Assembly also noted with concern that the lack of proper succession planning had a negative impact on the rejuvenation of the United Nations, and requested the Secretary-General to ensure that the employment of retired former staff had no adverse effects on the career planning and mobility of other staff. The General Assembly stressed that the hiring of retired former staff should be on an

[*] 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).

exceptional basis, and in this regard encouraged the Secretary-General to fill vacant posts at senior and decision-making levels through the established staff selection process.

8. In resolution 61/244, adopted on 22 December 2006, the General Assembly again noted with concern the continuous trend of hiring staff retirees for extended periods of time. The General Assembly further endorsed paragraph 84 of the report of the ACABQ (A/61/537, dated 26 October 2006), which states, *inter alia*, that the retention of retirees "clearly indicates continuing weaknesses in the advance planning, recruitment and staff placement processes".

9. As indicated above, the practice has been for UNIDO to follow the lead taken by the General Assembly with respect to the restrictions imposed on the re-employment of retired former staff members. Cooperation between the United Nations and UNIDO in the field of human resources is governed by article 16 (Personnel Arrangements) of the Agreement. Article 16, paragraph (a), of the Agreement stipulates that the United Nations and UNIDO agree:

> " . . . to develop, in the interests of uniform standards of international employment and to the extent feasible, common personnel standards, methods and arrangements designed to avoid unjustified differences in terms and conditions of employment, to avoid competition in recruitment of personnel, and to facilitate any mutually desirable and beneficial interchange of personnel. . . ."

10. Article 16, paragraph (b) (i), of the Agreement provides that the parties agree:

> "[t]o consult together from time to time concerning matters of mutual interest relating to the terms and conditions of employment of the officers and staff, with a view to securing as much uniformity in these matters as may be feasible".

11. In light of the above-quoted provisions of the Agreement, the United Nations and UNIDO have the following legal obligations:

(*a*) The obligation to develop, in the interests of uniform standards of international employment and to the extent feasible, common personnel standards, methods and arrangements (article 16, paragraph (a)). The restrictions on the employment of retired former staff members are an example of common personnel standards. A corollary to the foregoing obligation is that the parties should retain existing common personnel standards, methods and arrangements whenever it is practicable to do so. In other words, the United Nations and UNIDO should only depart from their common personnel standards, methods or arrangements for compelling policy reasons in the interests of the Organization. Such reasons could include, for example, that a party would experience operational difficulties unless it made a particular change.

(*b*) The obligation to consult together from time to time concerning matters of mutual interest relating to the terms and conditions of employment of their officers and staff, with the objective of securing as much uniformity in these matters as may be feasible (article 16, paragraph (b) (i)). The monetary ceiling of US$ 22,000 per calendar year is arguably a matter of mutual interest to the United Nations and UNIDO relating to the terms and conditions of employment of their "officers and staff". This is because the limit relates to the terms and conditions of current "officers and staff" in that they do not have a right or expectation to earn more than US$ 22,000 per calendar year if they are re-hired following retirement. In order to abide by the letter and spirit of article 16, paragraph (b) (i), UNIDO should consult with the United Nations before changing the limit. The consulta-

tions should presumably follow established mechanisms and the Director-General should bear in mind the results of the consultations when deciding what action, if any, to take with respect to the limit.

12. In the light of the above, I have concluded that:

(*a*) The Director-General has the authority to review or reassess the monetary ceiling of US$ 22,000 per calendar year on the earnings of retired former staff members. Amending this limit would be an important policy decision with wider implications for human resources management at UNIDO. Any review of the limit should therefore consider relevant statistics on the employment and remuneration of retirees, possible financial effects of increasing the limit, the consequences of such a change on succession planning and the careers of current staff, the needs of the Organization, and any other relevant policy aspects.

(*b*) The Director-General also has the authority to change the monetary ceiling of US$ 22,000 per calendar year. This authority is, however, circumscribed by the provisions of the 1985 Agreement between the United Nations and UNIDO. In order to comply with those provisions, a change should only be introduced (i) for compelling policy reasons in the interests of the Organization; and (ii) should follow prior consultations with the United Nations.

4 March 2008

(*c*) Interoffice memorandum regarding Government clearance of UNIDO experts sent on mission to a Member State

Cancellation or postponement of mission travel due to new clearance procedure for international experts and missions—Counterpart agency for UNIDO projects—Interpretation of Basic Cooperation Agreement—Obligation under Agreement to issue visas promptly and without cost to experts and other persons performing services on behalf of UNIDO

1. This is with reference to your email, dated [. . .], requesting my advice concerning a new clearance procedure for international experts and missions sent to [State]. According to the email, all experts and missions now require clearance by the [State's] Ministry of Industry, although the ministry is not the counterpart agency for UNIDO projects, resulting in the cancellation or postponement of recent mission travel. In this connection, you have asked for my interpretation of article XI, paragraphs 1 (a) and (d), of the 1988 Basic Cooperation Agreement with the Republic of [State], as well as of article XI, paragraph 1 (b), concerning visas.

2. The relevant clauses of article XI read as follows:

"Article XI

Facilities for Implementation of UNIDO Assistance

1. The Government shall take any measures which may be necessary to exempt UNIDO, its experts and other persons performing services on its behalf from regulations or other legal provisions which may interfere with operations under this Agreement and shall grant them such other facilities as may be necessary for the speedy and efficient imple-

mentation of UNIDO assistance. It shall, in particular, grant them the following rights and facilities:

(a) Prompt clearance of experts and other persons performing services on behalf of UNIDO;

(b) Prompt issuance without cost of necessary visas, licenses or permits;

(c) . . .

(d) Free movement within or to or from the country to the extent necessary for proper execution of UNIDO assistance;

(e) . . . ."

3. From your email, it appears that the clearance of experts and missions by the Ministry of Industry will be in addition to approval by the counterpart agency. Under article XI, paragraph 1 (a), the Government must give prompt clearance of experts and missions. How the Government is to give such clearance is not specified in the agreement. Under article XI, paragraph 1(d), the Government must facilitate free movement of UNIDO experts and missions within or to or from the country to the extent necessary for proper execution of UNIDO assistance.

4. In my view, the Government is within its rights under the Basic Cooperation Agreement to require UNIDO to seek clearance of missions and experts from a particular ministry. The procedure of clearance by the Ministry of Industry does not in itself contravene the provisions of article XI, paragraphs 1 (a) or (d). . . .

5. In terms of article XI, paragraph 1(b), of the Basic Cooperation Agreement, the Government is obliged to issue visas promptly and without cost to experts and other persons performing services on behalf of UNIDO. If this is currently not the case, either in terms of promptness or cost, the matter should also be addressed at a diplomatic level. When visas are requested, UNIDO should indicate that they should be issued as soon as possible and without cost in accordance with the provisions of the Basic Cooperation Agreement. At any rate, UNIDO should decline to pay for visas for staff or experts sent to [State].

29 April 2008

(*d*) Interoffice memorandum regarding the residency status of [Name]

Eligibility for international benefits in accordance with Staff Rule 103.07(b)—Residency status in a particular country is determined by competent national authorities in accordance with national law—Document issued by national authorities will normally be relied upon as conclusive evidence of the status it confers—Under staff rule 103.07 (b) 'permanent resident' means a non-national who acquires right to reside indefinitely in another country—Staff member whose residency permit is limited in time is not a permanent resident under the Staff Rules—Staff member who is a permanent resident would lose allowance or benefit only if the Director-General considers that the continuation of such allowance or benefit would be contrary to the purposes for which it was created

1. This is with reference to your interoffice memorandum dated [. . .], which we received on [. . .], in which you request urgent advice concerning the residency status of [Name], a [State] national who has been selected for a professional post in the Organization.

2. You write that [Name] indicated on his personal history form that he has applied for [State] citizenship. We understand that Human Resources Management requested [Name] to clarify his residency and visa status in [State] and that he submitted documents showing that he was granted a [residency permit] in 1998, which was extended in 2005 for a period of ten years, until 2015. You ask whether [the residency permit] dated [date] is to be considered as documentary evidence of his permanent residency status in [State] for the purposes of establishing his eligibility for international benefits in accordance with staff rule 103.07 (b).

3. An individual's residency status in a particular country is determined by the competent national authorities in accordance with national law. To ascertain a staff member's residency status in a particular case, UNIDO will normally rely on any document issued by the national authorities as conclusive evidence of the status it confers. In this instance your question is whether [the] residency permit, dated [date], is proof of [Name] permanent residency status in [State] for the purposes of staff rule 103.07 (b). Staff rule 103.04 (b) states:

> (b) A staff member who has acquired permanent resident status in any country other than that of his or her nationality may lose entitlement to non-resident's allowance, home leave, education grant, repatriation grant and payment of travel expenses upon separation from service for the staff member and his or her spouse and dependent children and removal of household effects, based upon place of home leave, if the Director-General considers that the continuation of such entitlement would be contrary to the purposes for which the allowance or benefit was created.

4. Under this rule "permanent resident" means a person who, as a non-national, acquires the right to reside indefinitely in another country; in other words, a person whose right to residency in that country is not temporary or limited in time. A staff member should accordingly be regarded as having acquired "permanent resident status" in a particular country for the purposes of staff rule 103.07 (b) if he or she becomes entitled to reside there on an indefinite basis.

5. It is noted that [Name] [State] residency title expires in 2015 and that he does not appear to enjoy the right to reside permanently or indefinitely in [State]. Accordingly, we believe that the [residency permit] should not be accepted as documentary evidence that he has acquired permanent resident status in [State] for the purposes of staff rule 103.07 (b).

6. I wish to make one or two additional observations regarding staff rule 103.07 (b) in so far as it relates to your query. The rule provides that a staff member who has acquired permanent resident status in any country other than that of his or her nationality may lose entitlement to specified allowances and benefits. Further, entitlement to those allowances and benefits may only be lost if the Director-General considers that the continuation of such entitlement would be contrary to the purposes for which the allowance or benefit was created. Even assuming that [Name] had acquired permanent resident status in [State], staff rule 103.07 (b) would not automatically deprive him of every allowance or benefit listed in the rule. Rather, the matter is left to the discretion of the Director-General, who should only withhold a particular allowance or benefit when he considers that its payment would be incompatible with the purposes for which the allowance or benefit was created.

3 November 2008

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 its work in April 1946.

1. Judgments

(i) *Sovereignty over Pedra Branca/Palau Batu Puteh, Middle Rock and South Ledge* (*Malaysia/Singapore*), Judgment, 23 May 2008.

(ii) *Certain Questions of Mutual Assistance in Criminal Matters* (*Djibouti* v. *France),* Judgment, 4 June 2008.

(iii) *Application of the Convention on the Prevention and Punishment of the Crime of Genocide* (*Croatia* v. *Serbia*), Preliminary Objections, Judgment, 18 November 2008.

2. Advisory Opinions

No advisory opinions were delivered by the International Court of Justice in 2008.

3. Pending cases as at 31 December 2008

(i) *Jurisdictional Immunities of the State* (*Germany* v. *Italy*) (2008 -).

(ii) *Application of the Interim Accord of 13 September 1995* (*the former Yugoslav Republic of Macedonia* v. *Greece*) (2008 -).

[1] The texts of the judgments, advisory opinions and orders are published in the *I.C.J Reports.* Summaries of the judgments, advisory opinions and orders of the Court are provided in English and French on its website at www.icj-cij.org. In addition, the summaries can also be found in *Summaries of Judgments, Advisory Opinions and Orders of the International Court of Justice* (United Nations Publication, ST/LEG/SER.F/1 and Add.1 and 2), which is published in the six official languages of the United Nations. The summaries of the decisions listed above will appear in the fourth addendum to this publication covering the period from 2008 to 2012, and are also available on the website http://www.un.org/law/ICJsummaries/.

(iii) *Accordance with International Law of the Unilateral Declaration of Independence by the Provisional Institutions of Self-Governance of Kosovo* (Request for Advisory Opinion) (2008 -).

(iv) *Application of the International Convention on the Elimination of All Forms of Racial Discrimination* (*Georgia* v. *Russia*) (2008 -).

(v) *Request for Interpretation of the Judgment of 31 March 2004 in the Case concerning Avena and other Mexican Nationals* (*Mexico* v. *the United States of America)* (2008 -).

(vi) *Aerial Herbicide Spraying* (*Ecuador* v. *Colombia*) (2008 -)

(vii) *Maritime Dispute* (*Peru* v. *Chile*) (2008 -)

(viii) *Pulp Mills on the River Uruguay (Argentina* v. *Uruguay)* (2006-).

(ix) *Dispute regarding Navigational and Related Rights (Costa Rica* v. *Nicaragua)* (2005-).

(x) *Maritime Delimitation in the Black Sea (Romania* v. *Ukraine)* (2004-).

(xi) *Certain Criminal Proceedings in France (Republic of the Congo* v. *France)* (2003-).

(xii) *Territorial and Maritime dispute (Nicaragua* v. *Colombia)* (2001-).

(xiii) *Application of the Convention on the Prevention and Punishment of the Crime of Genocide* (*Croatia* v. *Serbia*) (1999-)

(xiv) *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo* v. *Uganda)* (1999-).

(xv) *Ahmadou Sadio Diallo (Republic of Guinea* v. *Democratic Republic of the Congo)* (1998-).

(xvi) *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

No judgments were delivered by the International Tribunal for the Law of the Sea in 2008.

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[2] For more information about the Tribunal's activities, including relating to orders rendered in 2008, see the Annual report of the International Tribunal for the Law of the Sea for 2008 (ISBN 978-90-04-17065-0) and the Tribunal's website at www.itlos.org.

[3] United Nations, *Treaty Series*, vol. 1833, p. 3.

[4] United Nations, *Treaty Series*, vol. 2000, p. 468.

2. Pending cases as at 31 December 2008

Case No. 7 – Case concerning the Conservation and Sustainable Exploitation of Swordfish Stocks in the South-Eastern Pacific Ocean (Chile v. *European Community)* (2000-).

C. International Criminal Court[5]

The International Criminal Court (ICC) is an independent permanent court established by the Rome Statute of the International Criminal Court, 1998.[6] As at 31 December 2008, in accordance with the Statute and the Rules of Procedure and Evidence, the Prosecutor had opened investigations into four situations.

As of 2008, three States Parties to the Rome Statute - Uganda, the Democratic Republic of the Congo and the Central African Republic - had referred situations occurring on their territories to the Court. In addition, the Security Council had referred the situation in Darfur, the Sudan - a non-State Party. After a thorough analysis of available information, the Prosecutor had opened and is conducting investigations in all of the above-mentioned situations.

(*a*) Situation in the Democratic Republic of the Congo ICC-01/04

The Prosecutor v. *Thomas Lubanga Dyilo (ICC-01/04-01/06)*

(i) *Decision on the consequences of non-disclosure of exculpatory materials covered by Article 54(3)(e) agreements and the application to stay the prosecution of the accused, together with certain other issues raised at the Status Conference on 10 June 2008,* Trial Chamber I, 13 June 2008.

(ii) *Decision on the release of Thomas Lubanga Dyilo*, Trial Chamber I, 2 July 2008.

(iii) *Judgment on the appeal of the Prosecutor against the decision of Trial Chamber I entitled "Decision on the release of Thomas Lubanga Dyilo"*, Appeals Chamber, 21 October 2008.

(iv) *Decision to lift the stay of proceedings in the case of Thomas Lubanga Dyilo* (oral decision), Trial Chamber I, 18 November 2008.

The Prosecutor v. *Germain Katanga and Mathieu Ngudjolo Chui (ICC-ICC-01/04-01/07)*

On 7 Februay 2008, Mathieu Ngudjolo Chui was surrendered to the Court by the Democratic Republic of Congo pursuant to a sealed warrant of arrest issued by Pre-Trial Chamber I in 2007.

(i) *Decision on the Joinder of the Cases against Germain Katanga and Mathieu Ngudjolo Chui*, Pre-Trial Chamber I, 10 March 2008.

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[5] For more information about the Court's activities, see Report of the International Criminal Court (A/63/323 and A/64/356). See also the Court's website at www.icc-cpi.int/.

[6] United Nations, *Treaty Series*, vol. 2187, p. 3.

(ii) Decision on the confirmation of charges, Pre-Trial Chamber I, 30 September 2008.

The Prosecutor v. *Bosco Ntaganda (ICC-01/04-02/06)*

On 28 April 2008, Pre-Trial Chamber I decided to unseal the warrant of arrest, delivered on 22 August 2006 under seal, against Bosco Ntaganda.

(*b*) Situation in Uganda ICC-02/04

No indictment or decision on substantive matters was issued by the Court in 2008.

(*c*) Situation in the Central African Republic ICC-01/05

The Prosecutor v. *Jean-Pierre Bemba Gombo (ICC-01/05 -01/08)*

Decision to Unseal the Warrant of Arrest for Mr Jean-Pierre Bemba Gombo, Pre-Trial Chamber III, 24 May 2008.

(*d*) Situation in Darfur, the Sudan

The Prosecutor v. *Omar Hassan Ahmad Al Bashir ICC-02/05-01/09*

On 14 July 2008, the Prosecutor submitted an application for the issuance of a warrant of arrest against the Sudanese president Omar Al Bashir. On 9 December 2008, Pre-Trial Chamber I issued a decision requesting the Office of the Prosecutor to submit, no later 26 January 2009, additional information and supporting materials in relation to the Prosecution's request for a warrant of arrest for three rebel commanders.

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. Judgments delivered by the Appeals Chamber

[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 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/63/210-S/2008/515 and A/64/205-S/2009/394).

[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).

(i) *Prosecutor* v. *Hadžihasanović* & *Kubura*, Case No. IT-01-47-A, Judgement, 22 April 2008.

(ii) *Prosecutor* v. *Naser Orić,* Case No. 03-68-A, Judgement, 3 July 2008.

(iii) *Prosecutor* v. *Pavle Strugar*, Case No. IT-01-42-A, Judgement, 17 July 2008.

(iv) *Prosecutor* v. *Milan Martić,* Case No. IT-95-11-A, Judgement, 8 October 2008.

2. Judgments delivered by the Trial Chambers

(i) *Prosecutor* v. *Ramush Haradinaj* et. al., Case No IT-04-84, Judgement, 3 April 2008.

(ii) *Prosecutor* v. *Ljube Boškoski and Johan Tarčulovski*, Case No. 04-82-T, Judgement, 10 July 2008.

(iii) *Prosecutor* v. *Baton Haxhiu*, Case No. IT-04-84-R77.5, Judgement on Allegations of Contempt, 24 July 2008.

(iv) *Prosecutor* v. *Astrit Haraquija and Bajrush Morina,* Case No. IT-04-84-R77.4, Judgment on Allegations of Contempt, 17 December 2008.

E. International Criminal Tribunal for Rwanda[9]

The International Criminal Tribunal for Rwanda is a subsidiary body of the United Nations Security Council. The Tribunal was established by Security Council resolution 955 (1994), adopted on 8 November 1994.[10]

1. Judgments delivered by the Appeals Chambers

(i) *Prosecutor* v. *Athanase Seromba,* Case No. ICTR-2001-66-A, Judgement, 12 March 2008.

(ii) *Prosecutor* v. *Tharcisse Muvunyi*, Case No. ICTR-2000-55A-A, Judgement, 29 August 2008.

[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/63/209-S/2008/514 and A/64/206-S/2009/306).

[10] The Statute of the Tribunal is contained in the annex to the resolution.

2. Judgments delivered by the Trial Chambers

(i) *Prosecutor* v. *Siméon Nchamihigo,* Case No. ICTR-01-63-T, Judgement, 12 November 2008.

(ii) *Prosecutor* v. *Simon Bikindi,* Case No. ICTR-01-72-T, Judgement, 2 December 2008.

(iii) *Prosecutor* v. *Protais Zigiranyirazo,* Case No. ICTR-01-73-T, Judgement, 18 December 2008.

(iv) *Prosecutor* v. *Théoneste Bagosora* et. al., Case No. ICTR-98-41-T, Judgement, 18 December 2008.

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. Judgments delivered by the Appeals Chamber

(i) *Prosecutor* v. *Alex Tamba Brima* et. al. (Armed Forces Revolutionary Council (AFRC) Case), Case No. SCSL-2004-16-A, Judgment, 22 February 2008.

(ii) *Prosecutor* v. *Moinina Fofana and Allieu Kondewa* (Civil Defence Forces (CDF) Case), Case No. SCSL-04-14-A, Judgment, 28 May 2008.

2. Judgments delivered by the Trial Chambers

No judgments were delivered by the Trial Chambers of the Special Court for Sierra Leone in 2008.

3. Selected decisions of the Appeals Chamber[13]

There were no decisions of the Appeals Chamber pertaining to jurisdictional and other matters relating to the competence of the Court in 2008.

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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] Selected decisions of the Appeals Chamber which are related to questions of law of a substantive or procedural nature are covered in this section.

4. Selected decisions of the Trial Chambers[14]

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 2008.

G. Extraordinary Chambers in the Courts of Cambodia[15]

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 on 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 2008. However, the Co-Investigating Judges issued a closing order indicting Kaing Guek Eav, *alias* Duch, on 8 August 2008. The Co-Investigating Judges further issued orders extending the provisional detention of Nuon Chea, Ieng Sary, Ieng Thirith and Kieu Samphan.[17] In addition, the Pre-Trial Chamber delivered on 26 August its *Decision on Nuon Chea Appeal against Order Refusing Request for Annulment*, and on 5 December 2008 the *Pre-Trial Chamber Decision on Appeal against Closing Order Indicting Kaing Guek Eav alias "Duch"*.

H. Special Tribunal for Lebanon[18]

In 2007, the Special Tribunal for Lebanon was established pursuant 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.

No decisions or judgments were delivered by the Special Tribunal in 2008.

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[14] 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 2008 are covered in this section.

[15] The texts of the judgments and decisions are available on the Court's website at http://www.eccc.gov.kh/.

[16] United Nations, *Treaty Series,* vol. 2328.

[17] On 16 September 2008, 10 November 2008, 10 November and 18 November 2008, respectively.

[18] For more information about the Special Tribunal, see the Second, Third and Fourth reports of the Secretary-General submitted pursuant to Security Council resolution 1757 (S/2008/173, S/2008/734 and S/2009/106, respectively).

Chapter VIII

DECISIONS OF NATIONAL TRIBUNALS

United Kingdom

1. England and Wales High Court (Commercial Court), London

Entico Corporation Limited, Claimant, against the Secretary of State for Foreign and Commonwealth Affairs, Intervener, and the United Nations Educational, Scientific and Cultural Organization (UNESCO), Defendant
Decision of 28 March 2008

Immunity of an international organization—Convention on the Privileges and Immunities of the Specialized Agencies—Compatibility of the Specialized Agencies of the United Nations (Immunities and Privileges) Order with the right of access to fair and public judicial process under article 6 (1) of the European Convention on Human Rights (ECHR)—Article 6 (1) ECHR does not extend rights beyond existing jurisdiction—Grant of immunity under United Kingdom's legislation pursues a legitimate aim and is proportionate—Availability of an alternative forum

Mr. Justice Tomlinson:

(a) Introduction

1. The Claimant to which I shall refer as "Entico" is an English company carrying on business as a publisher. The Defendant, to which I will refer by its well known acronym UNESCO, is an international organisation which is one of the specialised agencies of the United Nations, hereinafter the UN. It was created in November 1945. The United Kingdom, as one of the founding members of the United Nations, has been a member of UNESCO since its establishment, with the exception of a period between 31 December 1985, when it withdrew from membership, and 1 July 1997, when it rejoined. As of October 2007 UNESCO had 193 Member States and six Associate Members. Under international law, international organisations are granted immunities and privileges before the courts of their member States to enable them effectively to pursue their functions and to operate free from control by any individual Member State (see M. Shaw, *International Law* (5th Edition, 2003), p. 1207 and *Mendaro* v. *World Bank*, 99 ILR 92 at 97–99 (US Court of Appeals, DC Circuit, 1983).

2. This case concerns a challenge to UNESCO's immunity from legal process, bestowed upon it by United Kingdom legislation pursuant to the UK's obligation undertaken by accession to the Convention on the Privileges and Immunities of the Special-

ised Agencies,* 1947, "the 1947 Convention", which has 115 parties, including the UK, which became a party on 16 August 1949. Article III, section 4 of the Convention provides that—

> "The specialised agencies, their property and assets, wherever located and by whomsoever held, shall enjoy immunity from every form of legal process except in so far as in any particular case they have expressly waived their immunity. It is, however, understood that no waiver of immunity shall extend to any measure of execution."

In addition, article III, section 5, provides that—

> "The premises of the specialised agencies shall be inviolable. The property and assets of the specialised agencies, 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.

These provisions apply to UNESCO under Annex IV of the 1947 Convention, to which the United Kingdom has notified its acceptance as a member of UNESCO, in accordance with article XI, Section 43 of the 1947 Convention.

3. Entico alleges that in October 2005 it concluded with UNESCO a contract pursuant to which Entico was to produce for UNESCO a calendar for 2006. Entico further alleges that in due course UNESCO failed and refused to perform the contract in consequence of which Entico has suffered loss and damage in the shape of costs and wasted expenditure. Entico quantifies its loss as £86,484. In this action Entico claims that amount from UNESCO.

4. The headquarters of UNESCO are in Paris. The relevant French authorities declined to effect service of these proceedings upon UNESCO, observing that UNESCO enjoys diplomatic immunity in that country. Colman J permitted service to be effected by an alternative method, *i.e.,* first class post, which was done but UNESCO has not acknowledged service. Entico by this application seeks judgment in default of acknowledgement of service. Since however as stated above UNESCO enjoys in this jurisdiction as elsewhere immunity from suit and legal process, Entico must first persuade the court to set aside that immunity. To that end it is asserted that UNESCO's immunity violates Entico's rights under article 6 (1) of the European Convention on Human Rights, hereinafter the ECHR, which may broadly be summarised as access to fair and public judicial processes. That challenge to the relevant UK legislation having been intimated, the Secretary of State for Foreign and Commonwealth Affairs intervenes pursuant to CPR 19.4A and submits that there is no incompatibility. The Secretary of State takes no position regarding the underlying dispute between Entico and UNESCO. UNESCO has taken no part in the proceedings although it has on three occasions written to the court to explain its position. It denies that a contract was ever concluded between Entico and UNESCO.

(b) The underlying dispute

5. Entico's case as to the manner in which a contract was concluded is succinctly set out in its Particulars of Claim. After describing the parties and explaining that at all material times Entico's Managing Director, Mr. James Ramsey, acted on its behalf and

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

that Ms. Michiko Tanaka, Chief of UNESCO Publishing, acted on UNESCO's behalf, the Statement of Case continues:

"3. By a contract, whose initial/draft terms were set out by Entico in writing (as set out in paragraph 4 below) and which terms were accepted by the subsequent conduct of UNESCO (as set out in paragraphs 6–7 below), made in or around late September-early October 2005 ('the Contract'), Entico and UNESCO agreed that Entico would provide a calendar for the year 2006 for UNESCO and in this context, and in particular to assist Entico in raising funds sufficient to pay the estimated £150,000-£180,000 cost to Entico of the production and distribution of the calendar, UNESCO gave permission to Entico to use the 'UNESCO' name and logo in the said calendar. These were the core terms of the relationship between the parties. The contract was made as follows:

"3.1 By an email dated 20 September 2005 Mr. Ramsey wrote to Ms. Tanaka stating, 'Thank you for making it possible for us to put together a calendar for UNESCO. Attached is the contract agreed between Entico and UN/ISDR [UN International Strategy for Disaster reduction]. It could form the basis of a contract between our organisations as well. I am keen to begin finding sponsors as soon as possible and as soon as we agree the contract I will send you a PDF of the proposal we send to sponsors for our approval.'

"3.2 Ms. Tanaka replied later the same day, stating 'The terms of the agreement seem to us correct. UNESCO will make small modifications to the terms in order to fit out [*sic*] own legal standards (please note that it is basically a matter of wording and not contents). Our legal service will prepare a draft which will be forwarded to you within this week.'

Copies of the emails and the Entico/ISDR Contract ('the Draft Contract') are attached as annexure 1 hereto.*

"4. The following were, among others, express terms of the Contract, as set out in the Draft Contract (substituting 'UNESCO' in the place of 'ISDR/ISDR Secretariat', '2006' in the place of '2005' and '£150,000-£180,000' in the place of '£200,000'):

"The 2005 Calendar . . .

"1. In accordance with the terms and conditions of this Licensing Agreement, the Parties shall produce the 2005 Calendar. The 2005 Calendar comprised [sic] of the following elements (the '2005 Calendar'), are information products aimed at raising public awareness.

License

"2. The ISDR Secretariat permits ENRICO [*sic*] the limited right to use its name and logo solely in connection with the production and distribution of the 2005 Calendar.

"3. Pursuant to the license granted by the ISDR Secretariat as set forth in paragraph 2 above, ENTICO is permitted to use the ISDR Secretariat name and logo to raise funds sufficient to pay the estimated GBP£200,000 cost to ENTICO for the production and distribution of the 2005 Calendar.

. . .

* Not reproduced herein.

Settlement of Disputes

[6]. Any matter for which no provision is made in this Licensing Agreement or any controversy between the ISDR Secretariat and ENTICO shall be settled by negotiation between the parties. Any controversy or claim arising out of or in connection with this Licensing Agreement shall, if attempts at settlement by negotiation have failed, be submitted to one single arbitrator agreed upon by both parties in accordance with the United Nations Commission on International Trade Law Arbitration Rules (UNCITRAL Rules) arbitration in Geneva by the single arbitrator agreed upon by all parties. The decision rendered in the arbitration. Including [*sic*] any division or allocation of costs, shall constitute the final adjudication of the dispute.

Non-waiver of immunity

7. Nothing in this agreement shall signify, express or imply a waiver of the immunity and privileges enjoyed by the United Nations pursuant to the 1946 Convention on Privileges and Immunities of the UN.*

Entry into force, modifications and termination

8. This Licensing Agreement shall enter into force upon signature by authorized officials representing the ISDR Secretariat and ENTICO, and shall continue in full force and effect until the expiration of all rights and obligations arising hereunder or its termination in accordance with the terms hereof.'

5. After 20 September 2005, Entico and UNESCO began the practical implementation of the Contract terms. Thus,

5.1 On 5 October Mr. Ramsey sent Ms. Tanaka a draft of the promotional letter that Entico wished to send out to potential sponsors of the calendar. Ms. Tanaka replied on 7 October.

5.2 Thereafter, at a point in time shortly after 10 October 2005, Mr. Ramsey spoke to Ms. Tanaka, by telephone. In this conversation Ms. Tanaka agreed that Entico could start work on the calendar.

5.3 Entico started work in earnest on the calendar on or around 10 October 2005.

6. UNESCO did not, as was mentioned in Ms. Tanaka's email of 20 September 2005, avail itself of the opportunity to revert to Entico with a re-drafted contract. In the premises, it is to be inferred from UNESCO's conduct, as particularised above in paragraph 5, that it (a) unilaterally waived the possibility of re-drafting the Draft Contract and (b) was satisfied to proceed on the basis of the Draft Contract as emailed by Mr. Ramsey to Ms. Tanaka (and with the substitutions set out above in paragraph 4).

7. Entico and UNESCO did not sign the Contract. It is to be inferred from the parties' conduct, as particularised above in paragraph 5, that they mutually waived that part of Clause 8 which required the parties' signature before the Contract could enter into force."

6. Performance of the contract and the nature of UNESCO's obligations is described at paragraphs 9 and 10 of the Particulars of Claim as follows:

* United Nations, *Treaty Series* , vol. 1, p. 15, and vol. 90, p. 327.

"9. Pursuant to the Contract/Agreement, and from 10 October 2005 onwards, Entico carried out the work required to design, produce and distribute the calendar, including researching and contacting potential sponsors, negotiating terms with them, undertaking graphic design work, researching photographs, compiling a database for the mailing/distribution and organising and booking the printing.

"10. In the premises, and pursuant to the Contract/Agreement, UNESCO was obliged to permit Entico to use the 'UNESCO' name and logo to raise funds sufficient to pay the cost to ENTICO for the production and distribution of the 2006 Calendar. UNESCO has failed and/or refused to do so (see paragraph 18 below)."

7. Entico alleges that on 2 November 2005 Ms. Tanaka telephoned Mr. Ramsey and asked him to put the project on hold since a potential sponsor, contacted by Entico, had complained to UNESCO about the request for sponsorship. On the next day Mr. Ramsey sent Ms Tanaka an e-mail which began "I would ask you to reconsider your decision to cancel this project . . .". There followed several weeks of discussions at the culmination of which, Entico alleges, it became clear that UNESCO did not wish to proceed with the calendar. Finally, by letter dated 19 December 2005 UNESCO asked Entico "to halt immediately the use of the UNESCO logos and of the Organisation's name".

8. By letter dated 21 April 2006 Entico's solicitors invoked the arbitration clause and invited UNESCO's agreement to proceed to arbitration under UNCITRAL Rules.

9. UNESCO replied on 22 May 2006. UNESCO again denied that any contract had been concluded. It said that invocation of the arbitration clause "must fail because that clause is part of a draft contract that did not enter into force".

10. Entico alleges at paragraph 24 of its Particulars of Claim that UNESCO thereby repudiated the arbitration clause, that that repudiation has been accepted by Entico and that the arbitration clause is in consequence inoperative.

11. At the hearing I expressed doubt whether this analysis is correct and doubt whether it was in any event in Entico's best interests to pursue it. Entico's arguments on incompatibility with article 6 and in particular on proportionality depend in part upon the assertion that there is available to Entico no alternative reasonable means of redress. It seemed to me that the court might on this ground be reluctant to strike down UK legislation giving effect to obligations owed under international law at the suit of a party which had voluntarily divested itself of an opportunity to pursue relief by way of arbitration. Upon reflection Ms. Fatima, for Entico, whilst denying that arbitration here represented a reasonable means of redress, nonetheless for the purposes of this application dropped her insistence upon the argument that Entico had accepted UNESCO's repudiation of the arbitration clause. She maintained her argument that UNESCO had indeed repudiated that agreement. I do not need to decide whether that point is correct, although I would require some persuasion that it is. The letter relied upon did no more than to deny the existence of an agreement to arbitrate in consequence of there never having been an agreement of which such a provision could form part. UNESCO denied that it had reached agreement with Entico on anything. The letter of 22 May 2006 needs also to be read in the light of the correspondence which preceded it. Ms. Fatima relied upon the decision of the Court of Appeal in *Downing* v. *Al Tameer Establishment* [2002] 2 All E.R. (Comm) 545, [2002] EWCA Civ 721. As the Court of Appeal there stressed however, that case turned upon an analysis of its own facts which included both denial by the defendant that a signed

agreement bound it and assertions that, if there was a contract, the claimant was himself in breach of it. Subsequently the principle of separability of an arbitration agreement enshrined in section 7 of the Arbitration Act 1996 has been the subject of consideration by the House of Lords in *Fiona Trust and Holding Corporation* v. *Privalov* [2007] UKHL 40; [2007] Bus LR 1719. That case was of course concerned with a different problem which arises where there is a challenge to the validity of an apparent agreement, rather than a denial that there was ever agreement to anything, including consequentially a denial that there was an agreement to arbitrate. Nonetheless in the light of that discussion the court is in my view likely to be slow to characterise denial of the existence of a contract as necessarily repudiatory of an agreement to arbitrate which, if the main contract was agreed, is included within it. At any rate for the purposes of the present application it is sufficient for me to record that in extensive correspondence UNESCO has never suggested that, if a contract *was* concluded with Entico, it did not include an arbitration clause in the form proposed by Mr. Ramsey in his e-mail of 20 September 2005 and as set out in the attached contract between Entico and UN/ISDR.

12. Although Entico is reluctant to use it, the UNCITRAL Rules, unsurprisingly, provide a mechanism to deal with the situation where the parties are unable, for whatever reason, to decide upon the identity of a sole arbitrator. Article 6 (2) provides:

> "If within 30 days after receipt by a party of a proposal made in accordance with paragraph 1 the parties have not reached agreement on the choice of a sole arbitrator, the sole arbitrator shall be appointed by the appointing authority agreed upon by the parties. If no appointing authority has been agreed upon by the parties, or if the appointing authority agreed upon refuses to act or fails to appoint the arbitrator within 60 days of the receipt of a party's request therefore, either party may request the Secretary-General of the Permanent Court of Arbitration at The Hague to designate an appointing authority."

13. Once constituted, the tribunal has by reason of article 21 of the UNCITRAL Rules and the principle of *Competence de la competence* [*sic*] or, as it is more often rendered in German, *Kompetenz/Kompetenz,* a power itself to determine whether an agreement was concluded. Article 21 of the UNCITRAL Rules provides:

> "1. The arbitral tribunal shall have the power to rule on objections that it has no jurisdiction, including any objections with respect to the existence or validity of the arbitration clause or of the separate arbitration agreement.
>
> "2. The arbitral tribunal shall have the power to determine the existence or the validity of the contract of which an arbitration clause forms a part. For the purposes of [this article], an arbitration clause which forms part of a contract and which provides for arbitration under these Rules shall be treated as an agreement independent of the other terms of the contract. A decision by the arbitral tribunal that the contract is null and void shall not entail *ipso jure* the invalidity of the arbitration clause."

14. Entico submits that an arbitration in which UNESCO does not participate will be a meaningless process. I cannot accept that submission. Arbitrations regularly proceed without the active participation of one party or alleged party thereto. The UNCITRAL Rules make express provision for just such a case. Entico itself proposed the incorporation of that machinery and, if it concluded a contract with UNESCO, its contract by definition envisaged the possibility that arbitration of a dispute arising therefrom might proceed without the co-operation of one party. The point has not yet been put to the test since Entico has so far declined to invoke the default procedure. It alleges that it is unreasonable

to expect it to resort to "unilateral arbitration". However it is by no means certain that UNESCO would not in fact participate, albeit under protest, in an UNCITRAL arbitration were a tribunal to be constituted. UNESCO's stance in correspondence has so far been that Entico's reluctance to initiate arbitration is itself indicative of an absence in Entico of a belief that a contract was in fact concluded. However in its letter to the court of 27 June 2007, copied to Entico's solicitors, UNESCO "reserve[d] its right, should such arbitration proceedings be initiated, to raise the issue of the non-existence of a contract between the parties". The inference is obvious that the forum in which such issue might be raised is the arbitration itself, as is in fact borne out by the manner in which UNESCO expressed themselves in a subsequent letter of 11 July 2007:

> "Consequently, if Entico truly believes that it has a valid contract with UNESCO, then Entico could unilaterally invoke the UNCITRAL procedure to have an arbitrator appointed.
>
> "UNESCO has no objection to Entico doing so, but UNESCO reserves it right to raise in that context its strongly-held view that there is no contractual relationship between Entico and UNESCO."

UNESCO has in fact on more than one occasion since Entico issued these proceedings stated that it "has no objection" if Entico wishes to have recourse to arbitration under the UNCITRAL Rules. It could of course have no such objection. Finally and perhaps more relevantly UNESCO has also confirmed, by letter of 8 October 2007 to Entico's solicitors, "that should an arbitral tribunal (scilicet, constituted pursuant to the UNCITRAL Rules) make[s] an award against UNESCO, the latter would always respect and comply with such an award, whatever may be the case concerned." I must naturally proceed upon the basis that this organisation, of which the UK is a member, will act in good faith and indeed comply with the terms of an award ordering the payment of damages or compensation to Entico. If UNESCO participated in an arbitration under protest, it would be likely to comply with any direction of the tribunal as to documentary disclosure. If it did not so participate it may be an open question to what extent it would comply with such a direction made prior to determination that a contract, including an agreement to arbitrate, was indeed concluded. It is also an open question to what extent Entico could obtain assistance from the supervisory court of the forum, *i.e.,* the Swiss Court. This and other issues are discussed in an article by Professors Emmanuel Gaillard and Isabelle Pingel-Lenuzza at [2002] 51 ICLQ pages 1–15, in which the learned authors bemoan the conservative approach of the European Court of Human Rights, hereinafter ECt.HR, and criticise a regime which accords to international organisations an immunity which goes beyond that habitually accorded to States.

15. Entico submits that resort to arbitration must nonetheless not be regarded as a reasonable option because the tribunal would lack the competence conclusively to determine, if it be the case, that whereas a contract was indeed concluded between Entico and UNESCO, it did not include as a term thereof an agreement to arbitrate. Whilst it is not for me finally to determine whether a contract was concluded, I have to say that I regard the prospect of a finding along the lines suggested as vanishingly small. Whilst this is a possibility that Entico has raised from the outset of the dispute, it is not currently part of its pleaded case in this action. In order to render it so Entico seeks leave to introduce into the Particulars of Claim a new paragraph 8 as follows:

> "Alternatively, insofar as the Contract was not agreed between the parties as pleaded above, the Claimant avers that an agreement ('the Agreement') was reached between the parties with the core terms being those pleaded above at paragraph 3. The Agreement was concluded partly orally, partly in writing and partly by the conduct of the parties: as is evident from the facts pleaded herein."

Although UNESCO stated that it did not object to this amendment, there is a case for disallowing it on the grounds that it is inconceivable that there could be spelled out of the e-mail exchanges, oral exchanges and conduct pleaded an agreement as alleged. I must record my view that I do indeed regard such an outcome as inconceivable. It seems to me that, on the basis of the case as pleaded, either there was a contract which included the "Settlement of Disputes" clause or there was no contract at all. That is the form of contract which Entico proposed. That proposal would have been understood by UNESCO as made with an eye to the immunity enjoyed by it and comparable organisations. Indeed I would think it right to impute to both parties, if they so conducted themselves as evincing to the other an intention to be bound, an intention to do so on terms which included the Settlement of Disputes provision. It is both reasonable and necessary to impute such an intention since without it the parties must necessarily have been intending to conclude an arrangement which they either knew or ought to have known would be unenforceable. Because of UNESCO's immunity, in order to be enforceable an agreement had to include the arbitration provision. For all these reasons a conclusion that the parties reached an enforceable agreement which did not include the proffered arbitration clause does not seem to me possible.

16. The possibility of such a conclusion being reached is a slender basis upon which to embark upon a consideration whether UK legislation should be struck down. Nonetheless I shall allow the amendment since, the article 6 point having been fully argued, both Entico and the Secretary of State are anxious that I should decide it. Without the amendment I do not consider that the point strictly arises. If, contrary to my expectation, an arbitral tribunal were to come to the conclusion which I regard as inconceivable, it would be most unfortunate if there remained the possibility of yet further expensive resort to this court to determine an argument which can be resolved now.

UNESCO's immunity

17. At the outset it should be stressed that the immunity given to UNESCO in this jurisdiction has been given solely in order to comply with the UK's obligations under public international law. I have already set out the source of this obligation at paragraph 2 above, the 1947 Convention. It is an obligation owed to virtually the entire international community. I have already set out sections 4 and 5 of article III which is headed "PROPERTY, FUNDS AND ASSETS". It should be noted that Section 4 makes no provision for any waiver whatsoever so far as concerns the immunity from execution, article IX, headed "SETTLEMENT OF DISPUTES" includes Section 31 which provides:

> "Each specialised agency shall make provision for appropriate modes of settlement of:
>
> (a) Disputes arising out of contracts or other disputes of private character to which the specialised agency is a party;

(b) Disputes involving any official of a specialised agency who by reason of his official position enjoys immunity, if immunity has not been waived in accordance with the provisions of section 22."

It necessarily follows that an "appropriate" mode of settlement does not include within it submission to the process of execution. A specialised agency cannot waive its immunity in that regard. There is nothing in the Convention to make enjoyment of the privileges and immunities conferred by sections 4 and 5 dependent upon compliance with section 31. Section 31 itself offers no criteria pursuant to which the appropriateness of a mode of settlement is to be judged. Importantly, section 31 does not say that the mode of settlement for which provision is made must be effective. It would be wholly inimical to the international scheme envisaged if individual States party arrogated to themselves the power to determine whether the provision made by each specialised agency for the settlement of disputes is adequate, whether considered generally or by reference to the facts of a particular case.

18. The 1947 Convention must be interpreted in accordance with the principles codified in articles 31–33 of the Vienna Convention on the Law of Treaties*, 1969, which require that a treaty be interpreted in good faith, in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of the treaty's object and purpose. Sections 4 and 5 of the 1947 Convention are clear, unequivocal and unconditional. They plainly require the parties to recognise and to give effect to a broad jurisdictional immunity possessed by each specialised agency. There is in my judgment no room for "reading down" the provisions of the 1947 Convention in order to take account of the provisions of the subsequent ECHR, a treaty which is binding upon only a minority of the parties to the 1947 Convention.

19. Article 31.3 (c) of the Vienna Convention provides:

"There shall be taken into account, together with the context:

(c) any relevant rules of international law applicable in the relations between the parties."

As was pointed out by the ECt.HR in *Bankovic* v. *Belgium* 123 ILR 94 at paragraph 57 of the judgment, the ECHR is itself an instrument which must be construed in the light of this article. Moreover article 30.4 (b) of the Vienna Convention has the effect that the need to comply with the requirements of the ECHR does not excuse compliance with an earlier convention to which more states are party than are party to the ECHR. As Mr. Greenwood QC, for the Secretary of State, submitted, it is in the highest degree implausible that when the states party drafted and acceded to the ECHR they intended thereby to place themselves in violation of their existing international obligations. Their existing international obligations, owed to many more states than were or are party to the ECHR, required them to recognise and to give effect to a broad and unqualified jurisdictional immunity enjoyed by each specialised agency. It would therefore be surprising if article 6 of the ECHR was intended to render this regime non-compliant, thereby plunging all states party to both the ECHR and the 1947 Convention into a position in which their obligations conflicted.

20. Since 1968 the immunity of international organisations in English law has been governed by the provisions of the International Organisations Act 1968. Section 1 of the Act provides, in relevant part:

* United Nations, *Treaty Series,* vol. 1155, p. 331.

"(1) This section shall apply to any organisation declared by Order in Council to be an organisation of which—

"(a) the United Kingdom, or Her Majesty's Government in the United Kingdom, and

"(b) any other sovereign Power or the Government of any other sovereign Power are members.

"(2) Subject to subsection (6) of this section, Her Majesty may by Order in Council made under this subsection specify an organisation to which this section applies and make any one or more of the following provisions in respect of the organisation so specified (in the following provisions of this section referred to as 'the organisation'), that is to say-

"(a) confer on the organisation the capacities of a body corporate;

"(b) provide that the organisation shall, to such extent as may be specified in the Order, have the privileges and immunities set out in Part I of Schedule 1 to this Act;"

Part I, section 1 of schedule 1 includes "immunity from suit and legal process" among the privileges and immunities which may be accorded by Order in Council. Section 1 (6) of the Act provides that:

"Any Order in Council made under subsection (2) or subsection (5) of this section shall be so framed as to secure—

(a) that the privileges and immunities conferred by the Order are not greater in extent than those which, at the time when the Order takes effect, are required to be conferred in accordance with any agreement to which the United Kingdom or Her Majesty's Government in the United Kingdom is then a party (whether made with any other sovereign Power or Government or made with one or more organisations such as are mentioned in subsection (1) of this section);

. . ."

21. The Specialised Agencies of the United Nations (Immunities and Privileges) Order, SI 1974/1260, was adopted under the 1968 Act. Section 6 provides that:

"Except in so far as in any particular case it has expressly waived its immunity, the Organisation shall have immunity from suit and legal process. No waiver of immunity shall be deemed to extend to any measure of execution."

The Specialised Agencies of the United Nations (Immunities and Privileges of UNESCO) Order, SI 2001/2560, states that "UNESCO is an organisation of which the United Kingdom and other sovereign powers are members" (section 2) and that "the Specialised Agencies of the United Nations (Immunities and Privileges) Order 1974 shall apply to UNESCO . . . in accordance with its terms" (section 3).

22. Ms. Fatima has suggested that in compliance with its interpretative obligation imposed by section 3 of the Human Rights Act 1998 the court should read section 6 of the 1974 Order in relation to UNESCO as containing a proviso to the effect that UNESCO shall have immunity from suit and legal process "provided article IX, section 31 of the [1947] Convention is satisfied" and that it should then go on to declare that as regards this claim UNESCO has failed to satisfy the requirements of article IX, section 31 and is not as regards this claim immune from suit and legal process. I have already given my reasons for regarding it as impossible to read the 1947 Convention as securing the result that the enjoyment of immunity is conditional or qualified in this way, and for thinking it impos-

sible and unprincipled for this court to adjudicate upon whether there has been compliance with Section 31. However as Mr. Greenwood points out the logical conclusion to be drawn from Ms. Fatima's argument is that the 1974 Order is in any event *ultra vires* without need to resort to the ECHR because contrary to section 1 (6) of the 1968 Act it confers privileges and immunities greater in extent than those required by the 1947 Convention.

23. It is unnecessary for me to decide whether article 6 of the ECHR is in these circumstances in fact engaged at all. In the context of State immunity Lord Millett in *Holland* v. *Lampen-Wolfe* [2000] 1 WLR 1573 at 1588 pointed out that while article 6 "forbids a contracting state from denying individuals the benefit of its powers of adjudication it does not extend those powers". In *Jones* v. *Saudi Arabia* [2007] *1 AC 270* both Lord Bingham at paragraph 14 and Lord Hoffmann at paragraph 64 expressed their agreement with Lord Millett's approach, As Lord Hoffmann put it, "there is not even a *prima facie* breach of article 6 if a State fails to make available a jurisdiction which it does not possess." When the UK became party to the ECHR it possessed no jurisdiction over UNESCO unless UNESCO chose to waive its immunity.

24. Since recognition of the immunity of an international organisation is equally required by international law, there can be no reason for regarding this approach as not equally applicable to recognition of organisational immunity as it is to recognition of State immunity. Certainly when considering whether the grant of immunity to an international organisation pursues a legitimate aim, the ECt.HR has drawn no distinction—see *Waite and Kennedy* v. *Germany* [1999] 30 EHRR 261 at paragraph 63. In that case however Germany conceded that article 6 was engaged and the court proceeded on the basis that it was applicable. That case was moreover concerned with the European Space Agency (the ESA), an international organisation created by a small group of European States all of which were parties to the ECHR and had been so for some years before the establishment of the ESA.

25. In the present case it makes no difference to the outcome of this application whether article 6 is regarded as engaged or not. I turn therefore to consider whether, on the assumption that article 6 is engaged, the grant of immunity to UNESCO pursues a legitimate aim and if there is a reasonable relationship of proportionality between the means employed and the aim sought to be achieved.

26. In relation to the first question, it was as I understood it the submission of Ms. Fatima that the court is concerned with the question whether the grant of immunity to UNESCO and similar organisations is itself a legitimate aim in the sense of being necessary to its or their proper functioning. In my judgment jurisprudence of which I must take account demonstrates that this is not the appropriate question. In its separate judgments in the trilogy of cases *Al-Adsani* v. *United Kingdom* (2001) 34 EHRR 273, *Fogarty* v. *United Kingdom (2001) 34 EHRR 302,* and *McElhinney* v. *Ireland* (2001) *34 EHRR 323,* the Grand Chamber of the ECt.HR included, in identical terms, the following passage:

> "The Court must first examine whether the limitation pursued a legitimate aim. It notes in this connection that sovereign immunity is a concept of international law, developed out of the principle *par in parem non habet imperium,* by virtue of which one State shall not be subject to the jurisdiction of another State. The Court considers that the grant of sovereign immunity to a state in civil proceedings pursues the legitimate aim of complying with international law to promote comity and good relations between States through the respect of another State's sovereignty.

> The Court must next assess whether the restriction was proportionate to the aim pursued. It recalls that the Convention has to be interpreted in the light of the rules set out in the Vienna Convention of 23 May 1969 on the Law of Treaties, and that article 31 (3) (c) of that treaty indicates that account is to be taken of 'any relevant rules of international law applicable in the relations between the parties.' The Convention, including article 6, cannot be interpreted in a vacuum. The Court must be mindful of the Convention's special character as a human rights treaty, and it must also take the relevant rules of international law into account. The Convention should so far as possible be interpreted in harmony with other rules of international law of which it forms part, including those relating to the grant of State immunity.
>
> It follows that measures taken by a High Contracting Party which reflect generally recognised rules of public international law on State immunity cannot in principle be regarded as imposing a disproportionate restriction on the right of access to a court as embodied in article 6 section 1. Just as the right of access to a court is an inherent part of the fair trial guarantee in that article, so some restrictions on access must likewise be regarded as inherent, an example being those limitations generally accepted by the community of nations as part of the doctrine of State immunity."

It follows in my judgment that compliance with obligations owed in international law is of itself pursuit of a legitimate aim. Furthermore, insofar as the 1974 Order reflects generally recognised rules of public international law on organisational immunity, which in my judgment it does, it cannot in principle be regarded as imposing a disproportionate restriction on the right of access to court as embodied in article 6 (1).

27. It is true that in the earlier case of *Waite and Kennedy,* which was concerned with organisational rather than State immunity, the ECt.HR did not express itself in quite such stark terms. However as I have also already pointed out, there can in fact be no principled basis upon which the approach can in the two situations be different. The Commission was in that case almost equally divided, a bare majority, 17—15, finding that Germany had not exceeded its margin of appreciation in limiting the applicants' rights of access to the national courts in relation to an employment dispute with the ESA. The dissentients pointed out that the Commission was there concerned only with the immunities of international organisations created after the coming into force of the ECHR—see page 281. It is true that in considering proportionality the Court said that it regarded as a material factor whether the applicants had available to them means of redress which were a reasonable alternative to access to the German national courts—see paragraph 68 at page 287. At paragraph 73 of the judgment the Court said that it took into account in particular the alternative means of legal process available to the applicants, which involved an internal tribunal. However I note that the Court did not approach the matter upon the basis that it is a pre-requisite to the compatibility with article 6 of organisational immunity that the organisation provide an alternative forum for dispute resolution. Furthermore the conceded applicability of article 6 in that case to disputes involving the ESA created no possibility of conflict of international obligations. The Court was concerned only with the obligations of an ECHR State owed to other ECHR States and to an organisation created by such States long after they had acceded to the ECHR. In the light of the approach of the ECt.HR in the subsequent trilogy of State immunity cases it is not in my judgment safe to assume that the ECt.HR would in a case involving the immunity of a global organisation created prior to the ECHR adopt reasoning similar to that to be found in *Waite and Kennedy.* Indeed it is worth setting out in full what the Court did on that occasion say about the immunity of

international organisations in the context of legitimate aim. At paragraph 63, a passage to which I have already drawn attention above, the Court said this:

> "Like the Commission, the Court points out that the attribution of privileges and immunities to international organisations is an essential means of ensuring the proper functioning of such organisations free from unilateral interference by individual governments.
>
> The immunity from jurisdiction commonly accorded by States to international organisations under the organisations' constituent instruments or supplementary agreements is a long-standing practice established in the interest of the good working of these organisations. The importance of this practice is enhanced by a trend towards extending and strengthening international co-operation in all domains of modern society.
>
> Against this background, the Court finds that the rule of immunity from jurisdiction, which the German courts applied to ESA in the present case, has a legitimate objective."

One can understand why in that case there was an argument for the applicability of article 6, which was of course conceded. By contrast I can find no justification for reading a convention concluded some years before the ECHR, the majority of whose parties are not bound by that later Convention, in the light of the later principles espoused by only a small sub-set of the parties to the earlier convention.

28. If however, contrary to my view, it is relevant to take into account the availability of an alternative forum, it is clear that there is in the present case an available mode of dispute resolution, *i.e.,* arbitration under UNCITRAL Rules. For the reasons already stated I find it inappropriate to assess its adequacy and likely efficacy, although I should record that it has certainly not been established that it is an inadequate remedy. It is the remedy which Entico itself put forward for acceptance. The immunity from execution of UNESCO is not incompatible with article 6—see *Kalogeropolou* v. *Greece* 129 ILR 537, and is in any event irrelevant, UNESCO having stated that it will comply with any award. As Mr. Greenwood pointed out the ability of either party to compel the attendance of the now retired Ms. Tanaka in any forum must be open to question, particularly if she has returned to her native country. Her absence would be likely to inconvenience UNESCO more than Entico. I accept that it may be open to question whether Entico will obtain documentary disclosure from UNESCO. However voluntary disclosure of documents other than those upon which a party wishes to rely is not a feature of litigation or arbitration in jurisdictions which do not follow the common law tradition.

29. In my judgment therefore if article 6 is engaged there is no violation of Entico's article 6 rights. It has of course already been held by the Court of Appeal in *Stretford* v. *The Football Association* [2007] 2 Lloyds Rep 31, that voluntarily entering into an arbitration agreement amounts to a waiver of rights under article 6. However my principal conclusion is that the 1974 Order is not incompatible with article 6. In those circumstances it is unnecessary for me to consider the various heads of relief pursued by Entico. I grant leave to Entico to amend its Particulars of Claim in terms of the draft placed before the court, so that those various heads of relief set out in the latest amendment may be regarded as having been open to and sought by Entico on this application. It follows however that it is inappropriate to grant to Entico any further relief and in particular I dismiss its application that judgment be entered in its favour against UNESCO in default of acknowledgement of service.

2. Court of Appeal (Civil Division), London

*A, K, M, Q & G, Applicants/Respondents, against the H.M. Treasury, Respondent/Appellant**
Decision of 30 October 2008

DOMESTIC IMPLEMENTATION OF UNITED NATIONS SANCTIONS—SECTION 1 OF THE UNITED NATIONS ACT 1946—THE TERRORISM ORDER 2006 (TO)—THE AL-QAIDA AND TALIBAN ORDER 2006 (AQO)—QUESTION OF WHETHER THE TO AND THE AQO WERE "*ULTRA VIRES* THE UNITED NATIONS ACT 1946" AND THUS UNLAWFUL IN WHOLE OR IN PART—EFFECT OF THE LACK OF PROCEDURAL SAFEGUARDS IN THE TO—THE PRINCIPLES OF PROPORTIONALITY AND LEGAL CERTAINTY—RIGHT TO A MERITS BASED REVIEW UNDER THE AQO FOLLOWING DESIGNATION BY THE UNITED NATIONS SANCTIONS COMMITTEE

Summary

In the case *A, K, M, Q & G* v. *H.M. Treasury,* the Court of Appeal (Civil Division) was confronted with questions regarding the lawfulness of the Terrorism Order 2006 (TO) and the Al-Qaida and Taliban Order 2006 (AQO). The case before the Court was an appeal by H.M. Treasury (HMT) against two orders made by Collins J of the High Court of Justice, Queen's Bench Division. By the first order delivered, where G was the Applicant, Collins J quashed both the TO and the AQO. By the second order, where A, K, M and Q were the Applicants, the TO was quashed again. Both Orders were quashed on the ground of being "*ultra vires* the United Nations Act 1946" and thus unlawful. The central issue in this appeal was whether the Judge was correct so to hold and, if he was, whether the whole Order should have been quashed in each case.

The Orders were made under section 1 of the United Nations Act to give effect to Security Council resolutions. The TO was laid down to apply the measures outlined in resolutions 1373 (2001) and 1452 (2002). The former, adopted following the attacks in New York on 11 September 2001, was concerned with prevention and criminalization of the financing of terrorist acts. The latter allowed each State to determine certain funds that should not be frozen. The AQO derived from resolutions 1267 (1999), 1333 (2000), 1390 (2002), 1452 (2002) and 1526 (2004). Resolutions 1267 and 1333 required the freezing of economic resources, controlled by the Taliban and Usama bin Laden, respectively.

All Applicants had been designated by direction of the HMT under article 4 (2) (a) of the TO. G was, in addition, to be considered as a designated person under the AQO, subject to designation by the United Nations Sanctions Committee, article 3 (1) (b) AQO.

The central question regarding the TO was whether the Crown exceeded its legislative power by concluding that the Order was necessary or expedient for the effective application of the mentioned resolutions. While the Applicants submitted that it had, HMT argued that, given the purpose of the resolutions, the Order should be construed broadly.

* Due to the length of the judgement, only selected extracts are reproduced herein. However, in order to ease the comprehension of this judgement, a summary has been prepared by the United Nations Secretariat. The complete text is available on the internet at http://www.judiciary.gov.uk/docs/judgments_guidance/a_k_m_q_g.pdf.

Since resolution 1373 did not state the standard of proof for ascertaining whether a particular person committed or attempted to commit terrorist acts before the State had to freeze his assets, Sir Anthony Clarke concluded that "the reasonable grounds for suspecting" test in article 4 (2) TO was lawful, on the condition that there was a right to challenge it. The terms of the TO in this respect were therefore found to lie within the Crown's statutory powers under section 1 of the United Nations Act and were not contrary to the European Convention of Human Rights. However, since the Order was not to go further than to apply the provisions of resolution 1373, the addition of "or may be" to the wording of article 4 (2) was not expedient and thus unlawful.

Thus the Judge did not quash the TO, but ruled that the words "or may be" should be excised from article 4 (2). Since the directions against all the Applicants were made by reference to "or may be", such directions were quashed.

As to the lack of express procedural safeguards in the TO, apart from that contained in article 5 (4), Sir Anthony Clarke pointed out that, while there is no statutory power to appoint a special advocate in proceedings arising out of the TO, the court would be able to authorize or request the use of one in an appropriate case. Regarding the lack of provisions to admit intercept material in legal proceedings, the Judge underlined that the courts must either guarantee sufficient procedural safeguards for the Applicants under article 5 (4) or set aside the direction in question. Under these circumstances, the TO was found to be "expedient".

The Applicants submitted that articles 7 (3) and 8 (2) of the TO were unlawful because they interfered with article 8 (1) of the European Convention on Human Rights with regard to the right to respect for one's private and family life and article 1 of the First Protocol thereto regarding the right to peaceful enjoyment of one's possessions, were disproportionate and did not satisfy the test of legal certainty. Regarding article 7 (3), Sir Anthony Clarke found neither the terms "economics resources" or "deal with", nor the defence provided for in article 7 (4), to be uncertain. Article 8 was also considered to be sufficiently clear, to have a legitimate purpose and to provide for a defence. Both articles satisfied the European Convention on Human Rights and were proportionate, given that HMT operated the license scheme, provided for in article 11, in the way indicated.

While Sir Anthony Clarke answered the question of the lawfulness of the AQO affirmatively, he held that the court could consider an application for judicial review by a person to whom the AQO applied as a result of designation by the United Nations Sanctions Committee and, under such an application, consider the basis of the listing.

Lord Justice Sedley delivered a dissenting Judgment. While agreeing with Sir Anthony Clarke in respect of procedures to ensure procedural safeguards and on the severance of the words "may be" from the TO, he concluded that the TO did not satisfy the test of legal certainty. The TO was therefore neither necessary nor expedient and was as such "*ultra vires* section 1 of the United Nations Act 1946". With regard to the AQO, Lord Sedley allowed the appeal on the same grounds as Sir Anthony Clarke.

Lord Justice Wilson agreed with Sir Anthony Clarke.

Extracts*

Sir Anthony Clarke, Master of the Rolls

. . .

The legal framework

The United Nations Act 1946

3. I take the description of the Orders and their *vires* largely from the Judgment. Both Orders were made under powers conferred by section 1 of the United Nations Act 1946 . . . , which provides, so far as material:

> "(1) If, under Article forty-one of the Charter of the United Nations signed at San Francisco on the twenty-sixth day of June, nineteen hundred and forty five (being the Article which relates to measures not involving the use of armed force) the Security Council of the United Nations call upon His Majesty's Government in the United Kingdom to apply any measures to give effect to any decision of that Council, His Majesty may by Order in Council make such provision as appears to Him necessary or expedient for enabling those measures to be effectively applied, including (without prejudice to the generality of the preceding words) provision for the apprehension, trial and punishment of persons offending against the Order . . .
>
> (4) Every Order in Council made under this section shall forthwith after it is made be laid . . . before Parliament."

The Judge noted in [3] that, although every Order must be laid before Parliament, there is no procedure which enables Parliament to scrutinise or to amend it, although no doubt an individual Member could seek to initiate a debate if he or she felt that an Order was unsatisfactory. The AQO and the TO were each laid before Parliament on the day after each was made and came into force on the following day. . . .

. . .

The TO

12. The preamble of the TO is in these terms:

> "Under Article 41 of the Charter of the United Nations, the Security Council of the United Nations has, by resolution 1373 (2001), adopted on 28th September 2001 and resolution 1452 (2002) adopted on 20th December 2002, called upon Her Majesty's Government in the United Kingdom and all other States to give effect to decisions of that Council in relation to terrorism."

By article 3 (1) of the TO, a designated person is one who is identified in Council Decision 2006/379/EC as provided for in article 2.3 of Regulation (EC) No 2580/2001 or one identified in a direction made under article 4 of the TO. Neither the Council Decision nor the Regulation is relevant here because the Applicants have all been designated by direction under article 4, which provides:

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* The selected extracts have been slightly edited by the United Nations Secretariat according to the United Nations editorial style.

"(1) Where any condition in paragraph (2) is satisfied, the Treasury may give a direction that a person identified in the direction is designated for the purpose of this Order.

(2) The conditions are that the Treasury have reasonable grounds for suspecting that the person is or may be–

(a) a person who commits, attempts to commit, participates in or facilitates the commission of acts of terrorism;"

. . .

As the Judge observed in [9], the relevant sub-paragraph in these cases is (*a*).

13. Article 7, which is quoted in full below, *inter alia* prohibits any person from dealing with funds or economic resources belonging to or held by a designated person. Article 7 (6) defines "deal with" to mean:

"(*a*) in respect of funds–

(i) use, alter, move, allow access to or transfer;

(ii) deal with in any other way that would result in any change in volume, amount, location, ownership, possession, character or destination; or

(iii) make any other change that would enable use, including portfolio management; and

(*b*) in respect of economic resources, use to obtain funds, goods or services in any way, including (but not limited to) by selling, hiring or mortgaging the resources."

"Economic resources" are defined in article 2 (1) to mean:

"assets of every kind, whether tangible or intangible, moveable or immoveable, which are not funds but can be used to obtain funds, goods or services."

Article 8, which is also quoted in full below, by paragraph (1) prohibits anyone from making "funds, economic resources or financial services available, directly or indirectly, to or for the benefit of a designated person", otherwise than under the authority of a licence granted by HMT under article 11. By articles 7(3) and 8(2) it is a criminal offence to contravene any of the prohibitions in them and, by article 13 (1), the offence carries a maximum of 7 years imprisonment on indictment or 12 months on summary conviction. The only defence available requires the defendant to show that he "did not know and had no reasonable cause to suspect" that he was dealing with funds or economic resources belonging to a person referred to in article 7 (2) or making funds available to or for the benefit of such a person otherwise than under licence. In these circumstances the Judge was right to say in [10] that the offence is one of strict liability and that the potential penalty is severe.

The AQO

14. In [11] the Judge described the AQO as even more draconian. It provides by article 3:

"(1) For the purposes of this Order–

(a) Usama bin Laden,

(b) any person designated by the Sanctions Committee, and

(c) any person identified in a direction, is a designated person.

(2) In this Part, "direction" (other than in articles 4(2) (d) and 5(3) (c)) means a direction given by the Treasury under article 4 (1)."

Article 4 (1) permits designation, where, pursuant to article 4 (2), HMT has reasonable grounds for suspecting that the person is or may be–

"(*a*) Usama bin Laden;

(*b*) a person designated by the Sanctions Committee;

(*c*) a person owned or controlled, directly or indirectly, by a designated person; or

(*d*) a person acting on behalf of or at the direction of a designated person."

15. The distinction between articles 3(1) (a) and (b) and 4(2) (a) and (b) is that the latter applies if there is some issue whether the individual in question is listed. If he is listed and there is no doubt that he is indeed that person, he is automatically designated under article 3(1). G is listed and so is caught by article 3 (1). This is of some importance because by article 5 (4) an application to the High Court can only be made to set aside a direction given by HMT, whereas article 3 (1) (b) does not involve a direction. It follows that G has no express right to apply to the High Court in respect of the freezing of assets or, in any case, the criminal offences imposed under articles 7 and 8, which are almost identical to articles 7 and 8 of the TO.

. . .

The appeal

24. In this appeal HMT says that the judge should not have struck down the TO and the AQO either in whole or in part. It says that, even if the Orders where in part *ultra vires,* there was no sensible basis upon which the judge should have struck them down in their entirety. A number of particular issues arise in this appeal as follows:

i) Is the TO *ultra vires* the UN ACT?

ii) If so, must the TO be quashed?

iii) What is the effect of the lack of procedural safeguards?

iv) Criminal offences: are the principles of legal certainty and proportionality satisfied?

v) Is the AQO unlawful?

vi) The challenge to the TO in the Respondent's Notice?

i) Is the TO *ultra vires* the United Nations Act?

. . .

33. Given the terms of section 1 quoted above, it is not and could not be in dispute that the Security Council had called upon the Government to apply the measures set out in Security Council resolutions 1373 and 1452. The question is therefore a narrow one, namely whether it was open to the Crown to conclude that it was necessary or expedient to introduce the terms of the TO in order to enable the provisions of those Security Council resolutions to be effectively applied.

. . .

37. . . . The difference is that the obligations in those paragraphs [paragraph 1 (c) and (d) Security Council resolution 1373] are limited to dealing with "persons who commit or attempt to commit terrorist acts" and the like, whereas under the TO the category of designated person is extended (a) to any person whom it is suspected on reasonable grounds is such a person and (b) to those who *may be* such a person.

38. The Applicants say that, in making the TO, the Crown has exceeded the power conferred on the United Kingdom by the conjunction of the Untied Nations Act and Security Council resolution 1373 in two respects. The first is that the conditions in the TO arise where HMT has reasonable grounds for suspecting that the person is a terrorist, which it is said are not present in the resolution, and the second is the addition of the words *may be*. I take them in turn.

"Reasonable grounds for suspecting"

39. . . . The question is whether the provision, including those words, "appears . . . necessary or expedient for enabling those measures to be effectively applied" are wide enough to support the TO as drafted. . . . For my part, I would accept the submission that the words "necessary or expedient" are disjunctive and that the Crown is indeed given a wide discretion. Moreover, I would further accept his submission that the court should not lightly declare a provision made pursuant to such a wide power to be *ultra vires*.

. . .

42. I would accept the submissions of HMT on this point. Security Council resolution 1373 is silent on the standard of proof to be satisfied on the question whether a particular person "commits, or attempts to commit, terrorist acts . . ." before a State must freeze his assets within paragraph 1 (c) or prohibit certain activities within paragraph 1 (d). In my opinion a State could properly conclude that it was expedient to provide that reasonable grounds for suspicion was an appropriate test. As indicated above such a test has been accepted by the ECtHR in relation to a similar problem arising out of the risk of terrorism. In these circumstances I would accept such a test as lawful provided that the person concerned has a proper opportunity to challenge the decision made against him. I return to this point below.

43. In reaching that conclusion I have had full regard to the principles stated by the Judge in [21–25] of his Judgment. He first referred, at [21], to the earlier cases of *R* v. *Halliday* [1917] AC 287 and *Chester* v. *Bateson* [1920] 1 KB 829. Then at [22] he quoted this statement by Lord Browne-Wilkinson in *R* v. *Secretary of State ex p Pierson* [1998] AC 539 at 575D:

> "From these authorities I think the following proposition is established. A power conferred by Parliament in general terms is not to be taken to authorise the doing of acts by the donee of the power which adversely affect the legal rights of the citizen or the basic principles on which the law of the United Kingdom is based unless the statute conferring the power makes it clear that such was the intention of Parliament."

44. At [22] the Judge referred to a later statement on the same page by Lord Browne-Wilkinson that it was not open to a court to quash an Order on the ground that it was harsh. Like the Judge, I agree that that is so, provided that the principle identified above is satisfied. More recently, the same point has been put by Lord Hoffmann in a well-known passage (quoted by the Judge at [24]) in *R* v. *Home Secretary ex p Simms* [2000] 2 AC 115 at 131E:

> "Parliamentary sovereignty means that Parliament can, if it chooses, legislate contrary to fundamental principles of human rights. The Human Rights Act 1998 will not detract from this power. The constraints upon its exercise by Parliament are ultimately political, not legal. But the principle of legality means that Parliament must squarely confront what it is doing and accept the political cost. Fundamental rights cannot be overridden by general or ambiguous words. This is because there is too great a risk that the full implications of the unqualified meaning may have passed unnoticed in the democratic process. In the absence of express language or necessary implication to the contrary, the courts therefore presume that even the most general words were intended to be subject to the basic rights of the individual. In this way the courts of the United Kingdom, though acknowledging the sovereignty of Parliament, apply principles of constitutionality little different from those which exist in countries where the power of the legislature is expressly limited by a constitutional document."

45. The Judge noted in [25] that general words have been allowed to override fundamental human rights. It is true that there have been such examples. All depends upon the true construction of the particular statute, which must of course be considered in its context and having regard to its statutory purpose. In this respect I agree with the Judge's conclusion at the end of [25], after referring to *Bishopgate* v. *Maxwell* [1992] BCLC 475 and *R* v. *Lord Chancellor ex p Lightfoot* [2000] QB 597:

> "All that can, I think, be derived from those authorities is that it is proper to look to see whether the context in which the relevant legislation is made provides a clear indication that, even in the absence of express words, fundamental rights are overridden."

The general principle remains.

46. The conclusion that the "reasonable grounds for suspecting" test is within the ambit of the general power expressed in the United Nations Act does not, in my opinion, fall foul of any of these general principles, provided (as I stated earlier) that the relevant person's right to challenge it is preserved: see below.

"May be"

. . .

48. . . . I can see that the widest possible power might be desirable from the Government's point of view. I can also see that the public might take the same view. However, the principles which I have just stated are of fundamental importance. The Judge said at [39] that, in his view, if Parliament was not to be involved, it was necessary for the Order in Council to go no further than to apply what the Security Council resolution required. I agree. In the case of "reasonable grounds for suspicion" it did not, in my opinion go further than Security Council resolution 1373 required, whereas, by adding "may be", it did.

49. There is no warrant in the language of the Security Council resolution for the addition of "may be" in the TO. There is scope for argument as to how much difference this will make but I would accept the argument advanced on behalf of the Applicants that it makes the test very wide indeed. In response to the submission that it was "expedient" within the meaning of section 1 of the United Nations act to express the test in such wide terms, the Judge expressed his conclusion thus at [40]:

> "Mr. Crow submits that it is expedient, which has a wider meaning. In *R(Gillan)* v. *Commissioner of Metropolitan Police* [2006] 2 AC 307, the distinction between necessary and

> expedient was considered in the context of powers of random search conferred by s.44 of the Terrorism Act 2000. Lord Bingham at paragraph 14 said that Parliament had used the word deliberately recognising that the powers were desirable in the interest of combating terrorism. But Lord Bingham drew attention to the close regulation of the exercise of the statutory power. There is no such regulation here and I do not accept that the extension to those who are suspected of possible involvement is properly within the scope of what is authorised by s.1 of the 1946 Act."

I agree.

50. For these reasons I would dismiss the appeal against this part of the Judge's Judgment.

ii) Must the TO be quashed?

51. The Judge quashed the whole TO. The question arises at this point whether the effect of the conclusion set out above, namely that the TO is *ultra vires* because of the inclusion of the words "or may be", is that the whole TO must be quashed. In my opinion it is not. Such a conclusion would to my mind be contrary to common sense. The obvious solution seems to me to order that the words "or may be" be excised from article 4 (2) of the TO.

52. Such an approach would be consistent with authority. The problem was considered in detail by the House of Lords in *DPP* v. *Hutchinson* [1990] 2 AC 783, where the principal speech was given by Lord Bridge, with whom the other members of the appellate committee agreed. It was there held that the general test was that of severability, which Lord Bridge said at page 804D was often referred to inelegantly as the blue pencil test. He described the test (or tests) at page 804E to G. He first referred to separate clauses, one of which exceeded the law-maker's power. He added that the test was in truth a double test, namely a test of textual severability and a test of substantial severability, which he described in this way:

> "A legislative instrument is textually severable if a clause, a sentence, a phrase or a single word may be disregarded, as exceeding the law-maker's power, and what remains is still grammatical and coherent. A legislative instrument is substantially severable if the substance of what remains after severance is essentially unchanged in its legislative purpose, operation and effect."

53. . . . Removal of the words "or may be" satisfies the textual severability test because what remains is still grammatical and coherent. It satisfies the substantial severability test because what remains after severance is essentially unchanged in its legislative purpose, operation and effect. I would therefore excise the words "or may be" from article 4 (2) of the TO.

54. The question remains what relief the Applicants are entitled to as a result. As stated above, all the directions made against them by HMT included the same statement, namely that HMT "has reasonable grounds for suspecting that you are, or may be, a person who facilitates the commission of acts of terrorism . . .". In these circumstances, since HMT made the directions expressly by reference to "or may be" I would quash the directions as made.

iii) What is the effect of the lack of procedural safeguards in the TO?

55. The only express procedural safeguard in the TO is that contained in article 5 (4), which provides:

"The High Court . . . may set aside a direction on the application of-

(*a*) the person identified in the direction, or

(*b*) any other person affected by the direction."

56. The Judge held in [41] and [47] of his Judgment that that safeguard was not sufficient to protect the legitimate interests of the Applicants. In essence the Judge's view was that, in the absence of provision to admit intercept material and of express rules providing for the use of special advocates on applications under article 5 (4) of the TO, it was not open to the Crown to conclude that the Order was an "expedient" provision to give effect to the measures adopted by the Security Council in Security Council resolution 1373.

. . .

58. There is so far no statutory power to appoint a special advocate in proceedings arising out of a TO. However, as I see it, there is no reason in principle why a special advocate should not be appointed in a particular case. The authorities show that in an appropriate case the court would have power to authorise or request the use of a special advocate: see in particular the decision of the House of Lords in *R (Roberts)* v. *Parole Board* [2005] UKHL 45, [2005] 2 AC 738, where it was held that the court had power to do so even where it was not sanctioned by Parliament. Whether it should do so or not would depend on the particular circumstances of the case. It has very recently been held by the Divisional Court in *Malik* v. *Manchester Crown Court* [2008] EWCA Admin 1362 that the court has power to ask the Attorney General to appoint a special advocate, but that it should only do so in an exceptional case and as a last resort: per Dyson LJ, giving the Judgment of the court at [93–102], especially at [99]. In these circumstances the court would have power to procure the appointment of a special advocate through the Attorney General.

. . .

60. . . .

While . . . I certainly agree that it would have been very much better to make appropriate statutory provision in the first place, I do not think that that is a sufficient basis upon which to hold that the TO was unlawful. The court has power to order a special advocate. In most cases, such an advocate should be able to ensure that the individual will receive a fair hearing and in other cases the direction would have to be discharged: see the reasoning of the majority in the House of Lords in *MB and AF.* In either such case, the interests of the individual will be protected. Subject to the problems to which I now turn, I would not therefore hold that the TO was unlawful on this ground.

61. Mr. Owen further relies upon the problems thrown up by the Regulation of Investigatory Powers Act 2000 ('RIPA'). The problem arises or potentially arises because, where there has been an intercept warrant issued by the Secretary of State authorising a relevant intercept, section 17 of RIPA contains a number of critical provisions as follows:

"(1) Subject to section 18, no evidence shall be adduced, question asked, assertion or disclosure made or other thing done in, for the purposes of or in connection with any legal proceedings . . . which (in any manner)–

(*a*) discloses, in circumstances from which its origin in anything falling within subsection (2) may be inferred, any of the contents of an intercepted communication or any related communications data; or

(*b*) tends (apart from any such disclosure) to suggest that anything falling within subsection (2) has or may have occurred or be going to occur.

(2) The following fall within this subsection–

. . .

(*c*) the issue of an interception warrant or of a warrant under the Interception of Communications Act 1985;

(*d*) the making of an application by any person for an interception warrant or for a warrant under that Act;"

62. Section 18 sets out the exceptions to section 17. It provides that section 17 (1) shall not apply to a number of different types of proceedings including, by paragraphs (da), (e) and (f), control order proceedings, proceedings before the Special Immigration Appeals Commission ('SIAC'), proceedings before the Proscribed Organisations Appeals Commission ('POAC') and, in each case, proceedings arising out of such proceedings. . . .

63. One might have thought that proceedings challenging a direction under article 4 of the TO would have been included in the exceptions in section 18 of RIPA in order to bring them into line with control order, SIAC and POAC proceedings. We were told that it has indeed been the Government's intention to introduce legislation to that effect since the introduction of the TO. . . .

69. Mr. Owen submits that in these circumstances the Judge was justified in reaching the conclusion he did in [41] as follows:

"There is another cogent reason for saying that it is not expedient. It is rightly accepted by Mr. Crow that the TO in terms and the AQO through judicial review allows consideration of whether the person affected is on the facts properly within the test to be applied. This means that all material must be available to the court, whether closed or open. I have some experience both as an ex-chairman of SIAC and in considering Control Orders cases of the evidence upon which reliance is placed by the Security Services and so available to the Treasury. This will usually—in my experience invariably—include intercept material. Section 17 of the Regulation of Investigatory Powers Act 2000 (RIPA) excludes such evidence from any legal proceedings. Exceptions to this exclusionary rule are contained in s.18, but they do not extend to applications or judicial review claims against orders made under the TO or the AQO. Thus the court is disabled from considering such material. This means that a fair and just consideration of the question whether the individual Applicant is one who should be subjected to an order is likely to be impossible in most cases. Fairness works for the Crown as it does for the Applicant. Thus the Treasury will be unable to rely on inculpatory intercept material just as the Applicant will be unable to rely on exculpatory intercept material. This cannot be in the interests of justice or indeed of ensuring that the right people are made subject to these orders. Thus it is in my view impossible to say that the use of an Order in Council is expedient unless it can provide an exception to s.17 of RIP A. It cannot nor does it purport to do so."

. . .

72. . . . Mr. Swift submits that it is not possible to say that the TO is unlawful and must be quashed. He says that this follows from the fact that a significant number of direc-

tions are based on open material. I would accept that submission. It seems to me that, if the TO is flawed on the basis that, where closed source material is relied upon, the rights of the individual are not protected, the appropriate course is to set aside the particular direction and not to quash the TO as a whole.

73. One possibility would be to set aside all directions which are based on closed source material on the ground that it is not possible to know whether it is based on intercept material within the prohibition in section 17 of RIPA, which I will call 'section 17 material'. I have however reached the conclusion that it would not be appropriate to take that course but that each case should be considered on its merits. . . . For my part, I would divide the cases into four: first, where there is only open source material; second, where there is closed source material of whatever kind but no section 17 material; third, where there is section 17 material which is wholly inculpatory; and fourth, where there is section 17 material some or all of which is exculpatory.

. . .

76. The fourth class of case is where there is some exculpatory material. If the individual is to be treated fairly, there must be a procedure which ensures that the exculpatory material is made available to the Judge or the allegation to which the exculpatory material relates is abandoned. . . .

77. Mr. Swift . . . submits that there is scope in a case of this kind for use to be made of section 18 (7) (b) of RIPA. In this regard I would accept the submission that there is scope for a Judge, perhaps on the application of a special advocate or of an individual, to order that disclosure be made to him alone. It is plain from section 18 (7) (c) that section 18 (7) is not limited to criminal cases. I would therefore reject Mr. Owen's submission to the contrary. I see no reason why a "relevant judge" in section 18(7)(*b*) should not include a judge hearing an application under article 5 (4) of the TO. Although it is true that section 18 (8) limits the power under section 18 (7) (b) to cases where the judge is satisfied that the exceptional circumstances of the case make the disclosure essential in the interests of justice, it appears to me that, where he learns that there may be section 17 material, a judge is likely to be readily so satisfied in order to satisfy himself that there is no exculpatory material.

78. The precise steps required will depend upon the facts of the particular case. Whether it will be possible (or indeed permissible) to disclose the gist of section 17 material and what, if any, other precautions can be taken to protect the interests of the individual cannot, as I see it, be decided in advance. However, I am not persuaded that those interests cannot be suitably protected by procedures to be worked out on a case by case basis. In these circumstances, while I fully understand his concerns, I have reached the conclusion that the Judge has gone too far in [41] of his Judgment. My answer to the question "what is the effect of the lack of procedural safeguards?" is that the courts must be relied upon to ensure that there are sufficient procedural safeguards to protect Applicants under article 5 (4), that it should be possible to do so and that, if it proves impossible in a particular case, the direction must be set aside. In these circumstances, it would be wrong to hold that it was not open to HMT to conclude that it was expedient to make the order and it would be wrong to quash the TO itself. The problems must be resolved, not by taking that dramatic step, but on a case by case basis.

iv) Criminal offences: are the principles of legal certainty and proportionality satisfied?

79. As I said in [13] above, articles 7 and 8 create criminal offences. At [38] the Judge said that, since the TO interfered with the Applicants' fundamental rights, it must involve the least possible interference with such rights. Between [42] and [46] the Judge considered the submission that the criminal offences created by articles 7 and 8 went far beyond what was reasonably required and offended against the principle of legal certainty. It was also submitted that they were disproportionate.

80. In considering that submission the Judge directed himself as to the relevant principles at [43] and [44]. He noted that in *Norris* v. *USA* [2008] UKHL 16, the House of Lords has recently considered the principle of legal certainty in the context of criminal offences. He quoted this extract from the composite report of the appellate committee, which seems to me to be of some relevance in this case:

> "53. In *R* v. *Rimmington* [2006] 1 AC 459, para 33 Lord Bingham of Cornhill said that there were two "guiding principles" relevant in that case, namely:
>
> > "no one should be punished under a law unless it is sufficiently clear and certain to enable him to know what conduct is forbidden before he does it; and no one should be punished for any act which was not clearly and ascertainably punishable when the act was done."
>
> As he went on to say in the next paragraph, those principles are "entirely consistent with article 7 (1) of the European Convention". At paragraph 35 he discussed a number of decisions of the Strasbourg Court on the topic, which established that, while "absolute certainty is unattainable, and might entail excessive rigidity", and "some degree of vagueness is inevitable" particularly in common law systems, "the law-making function of the courts must remain within reasonable limits".
>
> 54. In *R* v. *Jones (Margaret)* [2007] 1 AC 136, Lord Bingham took the matter a little further when he identified, at paragraph 29
>
> "what has become an important democratic principle in this country: that it is for those representing the people of the country in Parliament, not the executive and not the judges, to decide what conduct should be treated as lying so far outside the bounds of what is acceptable in our society as to attract criminal penalties. One would need very compelling reasons for departing from that principle."
>
> Lord Hoffmann said much the same at paragraph 60."

I agree with the Judge that those observations are pertinent in considering whether the offences created under the TO offend against the principle of legal certainty.

. . .

85. . . . I turn therefore to articles 7 and 8, which I set out in full as follows:

> "Freezing funds and economic resources of designated persons
>
> 7(1) A person (including the designated person) must not deal with funds or economic resources belonging to, owned or held by a person referred to in paragraph (2) unless he does so under the authority of a licence granted under article 11.
>
> (2) The prohibition in paragraph (1) applies in respect of-

(*a*) any person who commits, attempts to commit, participates in or facilitates the commission of acts of terrorism;

(*b*) any designated person;

(*c*) any person owned or controlled, directly or indirectly, by a person referred to in sub-paragraph (a) or (b); and

(*d*) any person acting on behalf or at the direction of a person referred to in sub-paragraph (a) or (b).

(3) A person who contravenes the prohibition in paragraph (1) is guilty of an offence.

(4) In proceedings for an offence under this article, it is a defence for a person to show that he did not know and had no reasonable cause to suspect that he was dealing with funds or economic resources belonging to, owned or held by a person referred to in paragraph (2).

(5) This article is subject to article 5 (2).

(6) In this article, "deal with" means–

(*a*) in respect of funds–

(i) use, alter, move, allow access to or transfer;

(ii) deal with in any other way that would result in any change in volume, amount, location, ownership, possession, character or destination; or

(iii) make any other change that would enable use, including portfolio management; and

(*b*) in respect of economic resources, use to obtain funds, goods or services in any way, including (but not limited to) by selling, hiring or mortgaging the resources.

MAKING FUNDS, ECONOMIC RESOURCES OR FINANCIAL SERVICES AVAILABLE TO DESIGNATED PERSONS, ETC.

8(1) A person must not make funds, economic resources or financial services available, directly or indirectly, to or for the benefit of a person referred to in article 7 (2) unless he does so under the authority of a licence granted under article 11.

(2) A person who contravenes the prohibition in paragraph (1) is guilty of an offence.

(3) In proceedings for an offence under this article, it is a defence for a person to show that he did not know and had no reasonable cause to suspect that he was making funds, economic resources or financial services available, directly or indirectly, to or for the benefit of a person referred to in article 7 (2).

(4) This article is subject to articles 4 (3) and 5 (2)."

It is convenient to consider article 7 first because it seems to me that somewhat considerations may apply to the two articles.

Article 7

86. The first question is whether the offence created by article 7 (3) satisfies the test of certainty identified above. I should note at once that it was agreed during the oral argument that the heading to article 7 is not correct because, as article 7 (1) makes clear, the prohibition applies to all the people identified by article 7 (2) and thus, in particular to people who commit, etc. acts of terrorism even though they are not designated. Mr. Owen

submits that article 7 does not satisfy the test of certainty. In essence he submits that, both read alone and in conjunction with article 8, article 7 imposes on persons in respect of whom the prohibition applies (*i.e.,* those referred to in paragraph (2)) and their families a series of provisions which impinge on almost every aspect of their daily lives in circumstances in which it is entirely unclear what they can and cannot lawfully do.

87. While it is necessary to have regard to the provisions of article 7 as a whole, it is also necessary to consider the language in which the prohibition is framed. I consider first the person in respect of whom the prohibition applies. I would not accept the submission that the definition of "economic resources" in article 2 is too vague or uncertain for that person to understand what is prohibited. It will be recalled that "economic resources" are defined as:

> "assets of every kind, whether tangible or intangible, movable or immovable, which are not funds but can be used to obtain funds, goods or services."

In short "economic resources" are all assets which can be used to obtain funds, goods or services, which seems to me to cover either everything or almost everything, other than a fund, which could be regarded as an asset.

. . .

89. As in the case of a freezing injunction, the purpose of article 7 is to freeze all the person's assets, including both funds and other assets. In my opinion, at any rate as far as concerns the person in respect of whom the prohibition applies, there is no lack of certainty in the prohibition in article 7 (1). He of course knows that he has been designated (article 7 (2) (b)) or is committing, etc. acts of terrorism (article 7 (2) (a)) and he knows what he must not do, namely deal with his assets.

90. The next question is whether the definition of "deal with" in article 7 (6) is sufficiently certain. Mr. Owen submits that it is not and a number of examples were discussed in argument. However, in my opinion the definition is sufficiently certain. I see no significant ambiguity in either sub-paragraph (a) or (b) of paragraph (6). The concept of "dealing with" or "deal with" is familiar in the context of freezing injunctions. No significant problem has been found with it. Although this does not of course mean that there may not be cases in which there is some scope for argument, I would not regard the example of the person's wife borrowing his car to go down to the shops as dealing with the car. If the Judge held that sub-paragraphs (a) and (b) of paragraph 6 are insufficiently certain to enable a person to know or the court to determine what amounts to "dealing with", I respectfully disagree.

91. The only remaining question is whether the defence provided for in article 7 (4) is sufficiently certain. The person in respect of whom the prohibition applies could not of course have such a defence if he was alleged to be dealing with his own assets.

92. In these circumstances I conclude that there is no lack of certainty in the case of the person in respect of whom the prohibition applies and who might be alleged to be in breach of article 7 (1) and thus to have committed an offence under article 7 (3). What then of other persons, say the person's wife? She will know if she has dealt with any funds or other resources. She will ordinarily know whether the funds or other resources belong to her husband. If he is designated, she is likely to know that fact. If he is not designated but is committing , etc. acts of terrorism, she may or may not know that fact or have reasonable

cause to suspect it. But if, in either case, she does not know that fact and has no reasonable cause to suspect it, she has a defence.

. . .

96. . . . I do share some of the concerns which have been expressed as to the operation of the license system.

97. Article 11 provides by 11 (1) that HMT may grant a licence to exempt acts specified in the licence from the prohibition in article 7 (1) or 8 (1). By article 11 (2) a licence may be (a) general or granted to a category of persons or to a particular person, (b) subject to conditions and (*c*) of indefinite duration or subject to an expiry date. By article 11 (3) and (4), subject to notice provisions, HMT has power to vary or revoke a licence at any time. By article 11 (5) any person who, for the purpose of obtaining a licence, knowingly or recklessly makes any statement or furnishes any document or information which is false in a material particular is guilty of an offence. By article 11 (6) any person who has done any act under the authority of a licence and who fails to comply with any conditions attaching to that licence is guilty of an offence.

98. The license system is plainly intended to be a central part of the scheme. It strikes me that, if the scheme is to be workable, it must be operated by all those concerned, especially HMT, fairly, expeditiously and with good will. In addition HMT must of course act lawfully when considering applications for licences. This involves taking account only of relevant considerations and acting rationally throughout. It seems to me to be critical that families and other third parties affected by TOs, which are in many ways draconian, should be treated fairly. Thus there was much discussion about whether it would be unlawful to sell a fruit cake without a licence to a person known by the seller to be one in respect of whom the prohibition applies. This problem should never arise in practice for two reasons.

99. First there must I think be a level, which might be described as *de minimis,* below which the TO cannot have been intended to bite. Would the designated person need a licence to buy a box of matches? Surely not because *de minimis non curat lex.* Secondly, and more importantly, as I see it, if HMT operate the licence system fairly, expeditiously and with good sense, giving proper reasons for their decisions, most if not all of the theoretical problems discussed in argument will become irrelevant. So too will the concerns expressed by the Judge in [42]. For example, it would surely be irrational for HMT to refuse a licence in respect of expenditure of many every day activities. In this regard it is noteworthy that by article 11 (2) a licence may be general and not addressed either to a particular category of person or to a particular person. Those are problems to be worked out in practice. Provided that the licence scheme is operated in the way I have indicated, I would hold that article 7 is both sufficiently certain, that it is proportionate and that it is not unlawful.

Article 8

100. The problem here is somewhat different. I was at one time attracted by Mr. Owen's submissions. Article 8 (1) does, however, seem to me to be clear. The prohibition is against making funds, economic resources or financial services available to a person referred to in article 7 (2). I have already expressed my view that the meaning of "funds" and "economic resources" is sufficiently clear and certain. As to "financial services", they

are defined in article 2 as "any service of a financial nature". The definition then adds "including but not limited to—(a) insurance-related services consisting of" four specified types of insurance and reinsurance and "b) banking and other financial services consisting of" 11 types of financial activity. I do not think that there should be any difficulty in identifying what is or is not within the expression "financial services".

101. The next question is whether it is sufficiently certain and proportionate to provide that a person must not make, for example, funds "available, directly or indirectly, to or for the benefit of a person referred to in article 7 (2)" without a licence. It is said that the notion of making, say, funds available indirectly for the benefit of such a person is hopelessly vague. For my part, I respectfully disagree. There should be no difficulty in identifying whether funds, other assets or financial services are being made available directly or indirectly to another person. It seems to me to be proportionate to include such a provision. The provision has a legitimate purpose, namely in order to avoid terrorists obtaining sufficient funds—or other financial benefits which render other of their funds available for deployment—for their activities. As I see it, it is proportionate because of the licensing scheme, provided that the licensing scheme is operated properly and expeditiously. As I indicated above, if the scheme is operated as the draftsman of the TO intended, any problems about comparatively small sums can be solved by the granting of an appropriate licence or, perhaps, by an agreement that they are *de minimis*. Indeed, it might be sensible to develop a scheme whereby a licence was routinely granted in the case of small sums, if only to meet the fruit cake example.

102. As I see it, any possible unfairness of the provision is met by the defence provided by article 8 (3). If the person against whom the charge is brought can show that he did not know and had no reasonable cause to suspect that he was making the funds, economic resources or financial services available to a person within article 7 (2) he will have a defence. Thus, while I accept the general submission that the certainty and proportionality of a measure such as the TO cannot be left to the trial of a particular case, it is permissible to have regard to all the relevant circumstances, including the certainty or otherwise of the language, the provision here of a licensing system and the available defences, in deciding whether the relevant provision is unlawful. Having approached the problem in that way, I have reached the conclusion that article 8 is not unlawful or contrary to any provision of the European Convention of Human Rights.

. . .

Conclusion on the lawfulness of the TO

104. For the reasons I have given, I would hold that, subject to the "or may be" point, the TO is not unlawful. I would sever "or may be" from the TO.

105. Finally in this regard I should refer to [46] in the Judgment of the Judge:

> "The purpose of asset freezing is to ensure that funds are not made available for terrorist purposes. Thus any criminal liability which could fall on those who make any assets available to a designated person should depend on whether it was or ought to have been known to the supplier that the asset in question could result in funds being available for terrorist purposes. That at the very least seems to me to be an appropriate limitation on criminal liability. How the requirements of the Sanctions Committee should be put into law is, as it seems to me, having regard to the principles to which I have referred a mat-

ter for Parliamentary consideration. Thus I am satisfied that neither Order in Council represents a necessary or expedient means of giving effect to the obligations imposed by the Committee."

106. While I entirely understand the sentiments behind that paragraph and am pleased that the government has at least (and at last) put a Bill before Parliament, I am unable to agree with the Judge's view (if it is his view) in the above paragraph that it is for the court to identify the appropriate limitation upon criminal liability and that only Parliament could provide otherwise. My conclusion is that, with the exception of "or may be", the terms of the TO are within the statutory power conferred on the Crown, *i.e.,* in effect the Government, by Parliament in section 1 of the United Nations Act and are not otherwise contrary to the European Convention of Human Rights or unlawful at common law.

Is the AQO unlawful?

107. The conclusions which I have reached so far lead to the conclusion that the AQO is also lawful, subject to one further point which is relevant only to the AQO. That point focuses on the nature and scope of the challenge that can be mounted against the AQO.

. . .

109. G does not seek to challenge the legality of the Security Council resolutions (referred to above) that led to the AQO. Nor is it sought to challenge the legality of the use of Article 41 of the United Nations Charter to make named individuals subject to United Nations sanctions. It is correctly accepted that neither the provisions of the Charter nor those of any of the Security Council resolutions have direct effect in English law, unless or until they are enacted as part of domestic law or become part of it pursuant to an EU instrument with direct effect. I have already indicated that HMT does not rely upon any EU Regulation in this case.

110. It follows from the above that, absent the AQO, G could not challenge his inclusion on the Committee's list. On the other hand, absent the AQO, he would not be affected by that inclusion as a matter of English law. As indicated in [14] and [15] above, the only challenge expressly contemplated by the AQO is that contained in article 5 (4), which gives the High Court power to set aside "a direction" on the application of the person identified by the direction or any other person affected by it. G is not such a person because there is no dispute that he is a "person designated by the Sanctions Committee" within the meaning of article 3 (1) (b) and therefore a "designated person" within the meaning of article 3 (1). The AQO gives him no express right to apply to the High Court for any relief.

. . .

113. The question is whether the court is powerless to achieve a solution whereby a person in the position of G can challenge the underlying basis of the case against him. The question is thus whether he can do so through judicial review. If he can do so under the TO, it would to my mind be very strange if he could not do so in the case of the AQO in a case where the evidence against him appears to be the same in both cases. If he cannot, I would be inclined to hold that the AQO was unlawful, by reason of the application of the principles briefly referred to in [43] to [45] above.

114. The argument addressed to the Judge by Mr. Singh on behalf of G was that there must be implied into the AQO a right of access to the court by way of judicial review. That is not in dispute. It is the extent or content of the right that is in dispute. Mr. Singh submitted to the Judge that, since fundamental rights were affected, that review must include a means of challenging the factual basis upon which the Committee's designation of him was made. This appears from the beginning of [16] of the Judgment. The Judge continued:

> "16. . . .This would require the court to have power to set aside the order notwithstanding that G was on the Sanctions Committee list if on consideration of the facts it took the view that he ought not to have been listed because he was not involved in any terrorist activity. This was all the more important because there was no means whereby G could mount an effective challenge to his listing since he did not know nor was there any procedure whereby he could be informed of what material had led the Committee to list him. It is known that he was listed following information given against him by the government. Thus, without the support of the government, his chances of achieving delisting are infinitesimal.
>
> 17. . . .In a document entitled 'Guidelines of the Committee for the Conduct of its Work' [issued by the United Nations in respect of its Sanctions Committee] delisting is dealt with at paragraph 8. The listed person may present a petition which should 'provide justification for the delisting request, offer relevant information and request support for delisting'. The petition can be presented either through the person's state of residence or what is called 'the focal point process'. The relevant governments, including naturally of the state in which the person resides, will be notified and asked to comment and to indicate if they recommend delisting. Any information in support of delisting held by a government should be forwarded to the Committee and any opposition to delisting will also be conveyed to the Committee. After 3 months, a decision will be taken and the person notified of it.
>
> 18. It is I think obvious that this procedure does not begin to achieve fairness for the person who is listed. Governments may have their own reasons to want to ensure that he remains on the list and there is no procedure which enables him to know the case he has to meet so that he can make meaningful representations. Nevertheless, that is what the Security Council has approved and the resolution, which Member States are obliged to put into effect, requires the freezing of the assets of those listed. Article 103 of the Charter makes clear that the obligations under the Charter take precedence over any other international agreements. Thus human rights under the European Convention of Human Rights cannot prevail over the obligations set out in the resolutions.
>
> 19. Mr. Singh has relied on the constitutional right of access to the court, a right which cannot be taken away save by express words in a statute. An Order in Council following the exercise of the Royal Prerogative is itself amenable to judicial review. Accordingly, submits Mr. Singh, albeit no right of challenge is contained in the Order, there must be such a right. . . ."

115. The Judge then considered between [19] and [25] a number of the well-known authorities, some of which I have referred to above. Then between [26] and [33] he discussed in some detail the position in EU which I touched upon earlier. He was critical of the decision of the CFI in *Kadi* and said at [32] that if the views of Advocate General Maduro were accepted, the AQO would have to be quashed. At [33] he noted Mr. Singh's submissions that fundamental principles of domestic law are not within Article 103 of the United Nations Charter because they are not "obligations under any other international

agreement" but are conferred, not only by article 6 of the European Convention on Human Rights, but by long-standing principles of the common law.

116. As I read the Judgment the Judge did not accept that submission, on the basis that by Article 25 of the United Nations Charter the Members of the United Nations "agree to accept and carry out the decisions of the Security Council". However he relied upon two statements of principle in *R (Al Jeddah)* v. *Defence Secretary* [2008] UKHL 58, [2008] 1 AC 332, where the House of Lords considered whether internment of a British citizen in Iraq pursuant to an Security Council resolution permitting internment if "it was necessary for imperative reasons of security" overrode his rights conferred by article 5 of the European Convention of Human Rights. As the Judge observed in [34], Lord Bingham drew attention in [33] to the facility for the Security Council to adopt resolutions couched in mandatory terms in which case Article 25 of the Charter bound Member States to comply with them. However, Lord Bingham accepted 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. In [39] Lord Bingham considered how the power or duty to detain on the express authority of the Security Council and the fundamental human right enshrined in article 5 of the European Convention of Human Rights could be reconciled. He said this:

> "There is in my opinion only one way in which they can be reconciled: by ruling that the U.K. may lawfully, where it is necessary for imperative reasons of security, exercise the power to detain authorised by [the relevant 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."

117. To like effect, Lord Carswell said at [136]:

> "I would emphasise . . . that that power [*viz*: to detain] has to be exercised in such a way as to minimise the infringements of the detainees' rights under article 5 (1) . . ."

Mr. Singh notes that in *Al Jeddah* the Applicant thus retained a right to a full merits based review, which was proceeding in the Administrative Court at the date of his release and, Mr. Singh tells us, has now been amended to a private law claim for false imprisonment.

118. The Judge concluded that the reasoning of Lord Bingham and Lord Carswell was clearly applicable to the inevitable breaches of property rights and infringement of article 8 rights resulting from the application of the AQO to G. I agree. The Judge's solution can be seen from this important sentence at the end of [36]:

> "Mr. Crow in the course of argument accepted—or rather, he was not instructed to oppose—the view I expressed that there should be a power in the court to decide whether the basis for listing existed which would then bind the Government to support delisting."

Mr. Crow QC was then appearing for HMT. In my judgment, that concession was correctly made.

119. I would accept the submission that the court has power to consider an application for judicial review by a person to whom the AQO applies as a result of designation by the Committee and, on such an application, to ask the court, so far as it can, to consider what the basis of the listing was. This will not be a challenge to the AQO itself but, if—to take the example of G—it were held that G should not have been listed, I see no reason why HMT (or the relevant Government body) should not, as the Judge put it, be bound to

support delisting. I feel sure that, if it were so held, HMT would wish to have G delisted and take appropriate steps to that end.

. . .

121. In these circumstances, I would not set aside the AQO as the Judge did. Although I would answer the question whether the AQO was unlawful in the negative, I would hold that G is entitled to a merits based review of the kind I have indicated.

. . .

Conclusion

124. For these reasons I would hold that the TO is lawful, provided the words "or may be" are excised from article 4 (2) of the TO. However, given that the directions under the TO were made by reference to the words "or may be", I would quash the directions as made. I would also hold that the AQO is lawful but that G is entitled to a merits based review of the kind I have indicated.

Lord Justice Sedley

. . .

126. The Orders in question were made by the Treasury during 2006 with the purpose of freezing the assets of persons suspected of aiding terrorism. By that date there were already in existence at least two statutory regimes—that is to say regimes introduced by Parliament in primary legislation—which enabled the executive to freeze terrorist assets: Part III of the Terrorism Act 2000, and the Anti-Terrorism, Crime and Security Act 2001, passed in the immediate wake of 9/11 and providing both for Parliamentary scrutiny of freezing orders and for compensation for anyone who wrongly suffers consequent loss. There was also Council Regulation EC 881/2002, which again provides for the freezing of terrorist assets but which has been neither transposed nor treated as having direct effect.

128. The case for the Treasury is that s.1 of the United Nations Act 1946 gives it something as close to absolute power as any department of state could hope for. So long as it relates to the subject-matter of a United Nations resolution not involving the use of armed force, it permits ministers to place before the Monarch for signature (a constitutional formality) a measure, backed by penal sanctions which until 1957 could include the death penalty, which ministers consider to be necessary or expedient (and the "or", I agree, is plainly disjunctive). It follows that the executive is empowered to make Orders which it knows to be unnecessary but considers to be expedient. This is relevant not simply as an illustration of the breadth of the powers ostensibly conferred by s.1 of the 1946 Act but because in the present case the existence of two statutory regimes designed for the same purpose means that neither Order in Council was necessary: both Orders, if they are to be held *intra vires,* must therefore be shown to be expedient.

. . .

131. Setting aside for the moment the questions of necessity and expediency, I do not doubt that it lies within the s.1 power to make provision, including the creation of new criminal offences, for freezing terrorist assets. For the reasons given by the Master of the Rolls I accept that this may legitimately include the assets of persons reasonably suspected of abetting terrorism, albeit this goes beyond the terms of the United Nations resolutions.

But, for the reasons I have given, it would not be open to the Treasury to include in an Order in Council a privative clause denying access to the courts; and the corollary, as it seems to me, is that the courts must be vigilant to ensure that the way in which the order operates does not turn their supervisory role into tokenism.

132. Art. 5 (4) of the Terrorism Order allows the court to set aside a direction. For the reasons given by Collins J and now by the Master of the Rolls, however, this is nowhere near adequate. If the court is to ensure that there is at least a reasonable basis for the Treasury's action, and to supervise designations along with directions, a properly structured and resourced system is needed. . . .

133. I am unable to accept that it is the role of the courts to devise such a system in order to save delegated legislation from invalidity. . . .

. . .

Suspicion of involvement

135. The enlargement of the scope of the Security Council resolution from those who commit or attempt to commit terrorist acts to persons reasonably suspected of doing so is, I agree, capable of coming within the "expedient" limb of s.1—so long as it is accompanied by proper judicial safeguards to ensure that suspicion is truly fact-based and genuinely reasonable. At present there is no such provision, and I do not think it is sufficient for the court to look forward to a time when there will be.

Suspicion of possible involvement

136. The inclusion of those who it is suspected may be involved in funding terrorism is, on any rational view, a bridge too far. There is practically nobody of whom this could not be said. The words are not merely tautologous (I doubt whether the drafter of the Order would thank Mr. Swift for his initial submission that they were). Can they then be severed?

. . .

138. For the reasons given by the Master of the Rolls, I agree that the offending words fall within the blue-pencil test set out by Lord Bridge in *DPP* v. *Hutchinson* [1990] 2 AC 783. But the question remains whether the order taken as a whole exceeds the statutory powers under which it purports to be made.

139. Whatever the answer to that question, it is plain that none of the present freezing orders can stand, since they all adopt the "or may be" formulation. (This, indeed, may be why the Treasury would not accept the possibility of excising the words from the Order in Council.) In agreement with the Master of the Rolls, I would quash them for this reason alone.

Procedural safeguards

140. The Master of the Rolls has set out the disturbing history of non-provision of measures and resources to ensure that individuals subjected to freezing orders get a fair hearing. . . . The Master of the Rolls has described this unhappy situation at [60–64] in terms with which I respectfully agree. I also agree with him that we must take the law as

it is, not as it ought to be. But the law as we now have it is an Order in Council which is markedly deficient in the opportunity which it gives, or which is provided by other means, to ensure that a freezing order cannot be made or confirmed without a fair hearing.

141. The Master of the Rolls has analysed at [69–78] the tranches of issues which may arise in relation to open and closed material. His conclusion is that these can be fairly managed case by case. I do not dissent from this, but once again it does not seem to me to resolve the *vires* question: is it the role of the courts not simply to ensure that what is lawfully enacted is fairly administered but to fill the gaps in enactments in order to make them valid?

Uncertainty

142. The same concern attends the question of vagueness in the criminalisation of acts proscribed by the Terrorism Order. I accept, as the European Court of Human Rights has accepted, that rough edges are unavoidable in the definition of many crimes. In such cases the arbiter has to be a court of criminal jurisdiction. But the degree of imprecision in the phrases "deal with" and "financial services" is considerable, and (in respectful disagreement with the Master of the Rolls) I do not think it sufficient to rely upon an administrative application of the principle *de minimis non curat lex* to keep them within bounds. . . .

. . .

The Terrorism Order

144. I come back therefore to the question whether, since the prior existence of parallel powers in primary legislation makes it unnecessary, the Terrorism Order as it stands can properly be said by government to be expedient. In my judgment it cannot. If its only vice was the inclusion of the words "or may be", it could be cured by severance. But it is far from being the only vice. The Order criminalises a wide and uncertain range of everyday acts. It makes no proper provision (and none is made elsewhere) for according due process to those against whom it is deployed. Even with the objectionable words "or may be" excised, the Order appears to me to be incompatible with the rule of law in its failure to accord legal protection to those it affects and the legal uncertainty of what it forbids. In agreement with Collins J I would hold the Order to be outwith the powers contained in s.1 of the United Nations Act 1946.

145. I would accordingly dismiss the Treasury's appeal. I stress that this would not leave the United Kingdom without means to stop funds reaching terrorist organisations: the Acts of 2000 and 2001 continue to provide such means.

The Al Qaida Order

. . .

147. . . . But, although I am not sanguine about the viability of a merits review in the face of security-sensitive material, I do not dissent from the holding of the Master of the Rolls that such review is in principle available under the Al Qaida Order. I stress the word "under": contrary to the Treasury's submission, it is not necessary for the individual affected to show the material part of the Order to be *ultra vires;* it will be sufficient if he can establish that he should not have been listed.

. . .

150. Upon this narrow footing, which represents at best a partial and potentially a Pyrrhic victory, I would allow the Treasury's appeal in as much of G's case as relates to the Al Qaida Order.

Lord Justice Wilson

151. Where the Judgments of the Master of the Rolls and Sedley LJ are in accordance, I agree with both of them. Where they are not in accordance, I agree with that of the Master of the Rolls. I therefore consider not only that the AQO is valid but that, subject to severance of the words "or may be" ("the three words") from article 4(2), the TO is also valid.

. . .

157. In my view therefore, subject to severance of the three words, the TO is valid. The issue as to the validity of the AQO raises a particular problem to which, in my view, the Master of the Rolls finds a sufficient, creative solution in [113] to [120] above, namely in a merits-based judicial review of the executive's response to a person's application to it that it should request, or support his own request, for delisting by the Sanctions Committee. . . .

Part Four

BIBLIOGRAPHY

A. International Organizations in General

1. General

Buchanan, A., and R. O. Keohane. The Legitimacy of Global Governance Institutions. *Ethics and International Affairs* vol. 20, iss. 4 (2006): p. 405.

Seyersted, F. *Common Law of International Organizations*. (Leiden [The Netherlands]: Martinus Nijhoff Publishers, 2008). 604 p.

White, N. D. Separate but Connected: Inter-Governmental Organizations and International Law. *International Organizations Law Review* vol. 5, iss. 1 (2008): p. 175.

2. Particular questions

Blokker, N. Comparing Apples and Oranges? Reinventing the Wheel? Schermers' Book and Challenges for the Future of International Institutional Law. *International Organizations Law Review* vol. 5, iss. 1 (2008): p. 197.

D'Amato, A. On the Legitimacy of International Institutions. In *Legitimacy in International Law.* Edited by R. Wolfrum and V. Röben. (Berlin [Germany]: Springer, 2008). p. 83.

Diggelmann, O., and T. Altwicker. Is there Something Like a Constitution of International Law? A Critical Analysis of the Debate on World Constitutionalism. *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht* vol. 68, iss. 3 (2008): p. 623.

Duplessis, I. Le droit international a-t-il une saveur coloniale? L'héritage des institutions internationales multilatérales. *Revue juridique Thémis* vol. 42, iss. 3 (2008): p. 311.

Eldar, O. Vote-Trading in International Institutions. *European Journal of International Law* vol. 19, iss. 1 (2008): p. 3.

Kelly, C. R. Institutional Alliances and Derivative Legitimacy. *Michigan Journal of International Law* vol. 29, iss. 4 (2008): p. 605.

Klein, P., and P. Sands. (Re) Writing a Handbook on the Law of International Organizations: Options and Challenges. *International Organizations Law Review* vol. 5, iss. 1 (2008): p. 215.

Martini, C. States' Control Over New International Organization. *Global Jurist* vol. 6, iss. 3 (2006): p. 4.

Pauly, L. W. The United Nations, the Bretton Woods Institutions, and the Reconstruction of a Multilateral Order. In *Global Ordering: Institutions and Autonomy in a Changing World.* Edited by L. W. Pauly and W. D. Coleman. (Vancouver [Canada]: University of British Columbia Press, 2008). p. 23.

Pellet, A. Legitimacy of Legislative and Executive Actions of International Institutions. In *Legitimacy in International Law.* Edited by R. Wolfrum and V. Röben. (Berlin [Germany]: Springer, 2008). p. 63.

B. United Nations

1. General

Belaid, S. Les nouveaux termes de la conflictualité internationale et le rôle des Nations Unies. *Études internationales* vol. 109, iss. 4 (2008): p. 66.

Bennis, P. The Lebanon War in the UN, the UN in the Lebanon War. In *The War on Lebanon: A Reader.* Edited by N. Hovsepian. (Northampton, Massachusetts [United States]: Olive Branch Press, 2008). p. 225.

Chesterman, S., T. M. Franck, and D. Malone. *Law and Practice of the United Nations: Documents and Commentary.* (New York [United States]: Oxford University Press, 2008). 648 p.

Crossley, N. *Multilateralism Versus Unilateralism: The Relevance of the United Nations in a Unipolar World*. (Frankfurt am Main [Germany]: Lang, 2008). 138 p.

de Kerckhove, F. Multilateralism on Trial: From the 2005 UN Summit to Today's Reality. In *Can the World be Governed? Possibilities for Effective Multilateralism.* Edited by A. S. Alexandroff. (Waterloo, Ontario [Canada]: Wilfrid Laurier University Press, 2008). p. 196.

Fitschen, T. Inventing the Rule of Law for the United Nations. *Max Planck Yearbook of United Nations Law* vol. 12 (2008): p. 347.

Gradoni, L. All'Ombra Delle Nazioni Unite. In *L'Occidente e l'Ordine Internazionale.* Edited by G. Gozzi and P. Manzini. (Turin [Italy]: Giappichelli, 2008). p. 141.

Huesa Vinaixa, Rosario. Desarrollo Normativo, Eficacia Del Sistema y Legitimidad. *La ONU y el mantenimiento de la paz en el siglo XXI.* 20-22 April 2006. Edited by J. Cardona Llorens. (Valencia [Spain]: Tirant lo Blanch, 2008). p. 323.

Knudsen, M. The EU, the UN and Effective Multilateralism: The Case of UN Reform. *Studia diplomatica* vol. 59, iss. 4 (2008): p. 137.

Kolb, R. *Introduction au droit des Nations Unies*. (Basel [Switzerland]: Helbing und Lichtenhahn, 2008). 366 p.

Liivoia, R. The Scope of the Supremacy Clause of the United Nations Charter. *International and Comparative Law Quarterly* vol. 57, iss. 3 (2008): p. 583.

Liivoja, R. The Scope of the Supremacy Clause of the United Nations Charter. *International and Comparative Law Quarterly* vol. 57, iss. 3 (2008): p. 583.

Neumann, P. *United Nations Procurement Regime: Description and Evaluation of the Legal Framework in the Light of International Standards and of Findings of an Inquiry into Procurement for the Iraq Oil-for-Food Programme*. (Frankfurt am Main [Germany]: Lang, 2008). 270 p.

Niemelä, P. A Cosmopolitan World Order? Perspectives on Francisco De Vitoria and the United Nations. *Max Planck Yearbook of United Nations Law* vol. 12 (2008): p. 301.

Paulus, A. Between Incapacity and Indispensability: The United Nations and International Order in the 21st Century. In *Progress in International Law.* Edited by R. A. Miller and R. M. Bratspies. (Leiden [The Netherlands]: Nijhoff, 2008). p. 289.

Beyond the UN Charter: Peace, Security and the Role of Justice Edited by O. Ribbelink. (The Hague [The Netherlands]: Hague Academic Press, 2008). 209 p.

Salmon, J. Les accords régionaux dans les travaux préparatoires de la charte des Nations Unies (San Francisco, 1945). *La ONU y el mantenimiento de la paz en el siglo XXI.* Edited by J. Cardona Llorens. (Valencia [Spain]: Tirant lo Blanch, 2008). p. 405.

Salomon, M. E. Poverty, Privilege and International Law: The Millennium Development Goals and the Guise of Humanitarianism. *German yearbook of international law* vol. 51 (2008): p. 39.

Sanz Caballero, S. Las Naciones Unidas y La Diplomacia Preventiva: ¿adaptación o reforma? *La ONU y el mantenimiento de la paz en el siglo XXI.* Edited by J. Cardona Llorens. (Valencia [Spain]: Tirant lo Blanch, 2008). p. 59.

Sicilianos, L.-A. Réforme des Nations Unies et nouvelles menaces. *La ONU y el mantenimiento de la paz en el siglo XXI.* Edited by J. Cardona Llorens. (Valencia [Spain]: Tirant lo Blanch, 2008). p. 99.

Ubéda-Saillard, M. Réforme des Nations Unies et nouvelles menaces. *La ONU y el mantenimiento de la paz en el siglo XXI.* Edited by J. Cardona Llorens. (Valencia [Spain]: Tirant lo Blanch, 2008). p. 125.

Whiteley, K. M. Holding International Organizations Accountable Under the Foreign Sovereign Immunities Act: Civil Actions Against the United Nations for Non-Commercial Torts. *Washington University Global Studies Law Review* vol. 7, iss. 3 (2008): p. 619.

2. Principal organs and bodies

General Assembly

Adinolfi, G. Il linguaggio giuridico negli atti delle organizzazioni internazionali: le raccomandazioini dell'Assamblea Generale dell'ONU in un'epoca di contrapposizione tra paesi occidentali e in via di sviluppo. In *Il linguaggio giuridico: prospettive interdisciplinari.* Edited by G. Garzone and F. Santulli. (Milano [Italy]: Giuffrè, 2008). p. 123.

Barriga, S., and A. Alday. The General Assembly and the Rule of Law: Daring to Succeed? the Perspective of Member States. *Max Planck Yearbook of United Nations Law* vol. 12 (2008): p. 381.

Cameron, N. M.d.S., and A. V. Henderson. Brave New World at the General Assembly: The United Nations Declaration on Human Cloning. *Minnesota Journal of Law, Science and Technology* vol. 9, iss. 1 (2008): p. 145.

Ferri, N. The Protection of the Underwater Cultural Heritage According to the United Nations General Assembly. *International Journal of Marine and Coastal Law* vol. 23, iss. 1 (2008): p. 137.

Krasno, J., and M. Das. The Uniting for Peace Resolution and Other Ways of Circumventing the Authority of the Security Council. In *The UN Security Council and the Politics of International Authority.* Edited by B. Cronin and I. Hurd. (London [United Kingdom]: Routledge, 2008). p. 173.

Zaum, D. The Security Council, the General Assembly, and War: The Uniting for Peace Resolution. In *The United Nations Security Council and War: The Evolution of Thought and Practice since 1945.* Edited by V. Lowe. (Oxford [United Kingdom]: Oxford University Press, 2008). p. 154.

International Court of Justice

Crawford, J., and A. Pellet. Anglo Saxon and Continental Approaches to Pleading before the ICJ = Aspects des modes continentaux et anglo-saxons de plaidoiries devant la C.I.J. In *International Law between Universalism and Fragmentation : Festschrift in Honour of Gerhard Hafner.* Edited by I. Buffard, *et al.* (Leiden [The Netherlands]: Martinus Nijhoff, 2008). p. 832.

Dimitrijević, V., and M. Milanović. The Strange Story of the Bosnian Genocide Case. *Leiden Journal of International Law* vol. 21, iss. 1 (2008): p. 65.

Goldstone, R. J., and R. J. Hamilton. Bosnia v. Serbia: Lessons from the Encounter of the International Court of Justice with the International Criminal Tribunal for the Former Yugoslavia. *Leiden Journal of International Law* vol. 21, iss. 1 (2008): p. 95.

Green, F. Fragmentation in Two Dimensions: The ICJ's Flawed Approach to Non-State Actors and International Legal Personality. *Melbourne Journal of International Law* vol. 9, iss. 1 (2008): p. 47.

Griebel, J., and M. Plücken. New Developments regarding the Rules of Attribution? the International Court of Justice's Decision in Bosnia v. Serbia. *Leiden Journal of International Law* vol. 21, iss. 03 (2008): p. 601.

Groome, D. Adjudicating Genocide: Is the International Court of Justice Capable of Judging State Criminal Responsibility? *Fordham International Law Journal* vol. 31, iss. 4 (2008): p. 911.

Halink, S. All Things Considered: How the International Court of Justice Delegated its Fact-Assessment to the United Nations in the Armed Activities Case. *New York University Journal of International Law and Politics* vol. 40, iss. Special Issue (2008): p. 13.

Higgins, R. MacDermott Lecture 2008: Litigating International Disputes - The Work of the International Court of Justice in a Changing World. *Northern Ireland Legal Quarterly* vol. 59, iss. 4. (2008): p.339.

Hummer, W. Argentinien Vs Uruguay - Ein Mehrfrontenkampf. In *International Law between Universalism and Fragmentation : Festschrift in Honour of Gerhard Hafner.* Edited by I. Buffard, *et al.* (Leiden [the Netherlands]: Martinus Nijhoff, 2008). p. 869.

Keith, K. J. The International Court of Justice: Primus Inter Pares? *International Organizations Law Review* vol. 5, iss. 1 (2008): p. 7.

Kirk, E. A. Case Concerning Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea. *International and Comparative Law Quarterly* vol. 57, iss. 3 (2008): p. 701.

Kwiatkowska, B. The 2007 Nicaragua v. Colombia Territorial and Maritime Dispute (Preliminary Objections) Judgment: A Landmark in the Sound Administration of International Justice. In *International Law between Universalism and Fragmentation: Festschrift in Honour of Gerhard Hafner.* Edited by I. Buffard, *et al.* (Leiden [The Netherlands]: Martinus Nijhoff, 2008). p. 909.

Lathrop, C. G. Sovereignty Over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge. *American Journal of International Law* vol. 102, iss. 4 (2008): p. 828.

Mathias, D. S. The 2007 Judicial Activity of the International Court of Justice. *American Journal of International Law* vol. 102, iss. 3 (2008): p. 588.

Palchetti, P. The Power of the International Court of Justice to Indicate Provisional Measures to Prevent the Aggravation of a Dispute. *Leiden Journal of International Law* vol. 21, iss. 3 (2008): p. 623.

Quigley, J. International Court of Justice as a Forum for Genocide Cases. *Case Western Reserve Journal of International Law* vol. 40, iss. 1-2 (2008): p. 243.

Shany, Y., and S. Horovitz. Judicial Independence in the Hague and Freetown: A Tale of Two Cities. *Leiden Journal of International Law* vol. 21, iss. 1 (2008): p. 113.

Thirlway, H. The Law and Procedure of the International Court of Justice. *The British Year Book of International Law* vol. 78 (2008): p. 17.

Vinuales, J. E. The Contribution of the International Court of Justice to the Development of International Environmental Law: A Contemporary Assessment. *Fordham International Law Journal* vol. 32, iss. 1. (2008): p.232.

Wittich, S. The Judicial Functions of the International Court of Justice. In *International Law between Universalism and Fragmentation: Festschrift in Honour of Gerhard Hafner.* Edited by I. Buffard, *et al.* (Leiden [The Netherlands]: Nijhoff, 2008). p. 981.

Secretariat

Haynes, D. F. Ethics of International Civil Service: A Reflection on how the Care of United Nations' Staff Impacts the Ability to Fulfill their Role in 'Harmonizing' the World. *Hamline Journal of Public Law and Policy* vol. 30, iss. 1 (2008): p. 175.

Hossain, K. The Challenge of Peace Management: The Role of the United Nations Secretary General. *Indian Journal of International Law* vol. 48, iss. 2 (2008): p. 232.

Münch, W. The Revision of the System of Administration of Justice in the United Nations Secretariat: The Current State of Affairs in the Light of the Recommendations of the Secretary-General's Redesign Panel. In *Frieden in Freiheit = Peace in liberty = Paix en liberté: Festschrift für Michael Bothe zum 70.* Edited by A. Fischer-Lescano, *et al.* (Baden-Baden [Germany]: Nomos, 2008). p. 205.

Security Council

Abi-Saab, G. The Security Council as Legislator and as Executive in its Fight Against Terrorism and Against Proliferation of Weapons of Mass Destruction: The Question of Legitimacy. In *Legitimacy in International Law.* Edited by R. Wolfrum and V. Röben. (Berlin [Germany]: Springer, 2008). p. 109.

Abril Stoffels, R. El impulso del Secretario General y la implicación del Consejo de Seguridad de las Naciones Unidas en el respecto de los derechos de la infancia en los conflictos armados: el mecanismo establecido en la resolución 1261. In *Protección de personas y grupos vulnerables: especial referencia al derecho internacional y europeo.* Edited by J. Ferrer Lloret and S. Sanz Caballero. (Valencia [Spain]: Tirant lo Blanch, 2008). p. 33.

—-. La reforma del Consejo de Seguridad: métodos de trabajo y temas conexos. *La reforma del Consejo de Seguridad: métodos de trabajo y temas conexos.* 20-22 April 2006. Edited by J. Cardona Llorens. (Valencia [Spain]: Tirant lo Blanch, 2008). p. 377.

Alexopoulos, A., and D. Bourantonis. The Reform and Efficiency of the UN Security Council: A Veto Players Analysis. In *Multilateralism and Security Institutions in an Era of Globalization.* Edited by D. Bourantonis, K. Ifantis, and P. Tsakonas. (Abingdon [United Kingdom]: Routledge, 2008). p. 306.

Andreopoulos, G. J. The Challenges and Perils of Normative Overstretch. In *The UN Security Council and the Politics of International Authority.* Edited by B. Cronin and I. Hurd. (London [United Kingdom]: Routledge, 2008). p. 105.

Aumond, F. La situation au Darfour déferée à la CPI: retour sur une résolution 'historique' du Conseil de sécurité. *Revue générale de droit international public* vol. 112, iss. 1 (2008): p. 111.

Berdal, M. The Security Council and Peacekeeping. In *The United Nations Security Council and War: The Evolution of Thought and Practice since 1945.* Edited by V. Lowe. (Oxford [United Kingdom]: Oxford University Press, 2008). p. 175.

Boisson de Chazournes, L., and D. Campanelli. The United Nations Compensation Commission: Time for an Assessment? In *Frieden in Freiheit = Peace in liberty = Paix en liberté : Festschrift für Michael Bothe zum 70.* Edited by A. Fischer-Lescano, *et al.* (Baden-Baden [Germany]: Nomos, 2008). p. 3.

Boon, K. E. Coining a New Jurisdiction: The Security Council as Economic Peacekeeper. *Vanderbilt Journal of Transnational Law* vol. 41, iss. 4 (2008): p. 991.

Bothe, M. Security Council's Targeted Sanctions Against Presumed Terrorists: The Need to Comply with Human Rights Standards. *Journal of International Criminal Justice* vol. 6, iss. 3 (2008): p. 541.

Boulden, J. The Security Council and Terrorism. In *The United Nations Security Council and War: The Evolution of Thought and Practice since 1945.* Edited by V. Lowe. (Oxford [United Kingdom]: Oxford University Press, 2008). p. 608.

Bühler, K. G. The Austrian Rule of Law Initiative 2004-2008: The Panel Series, the Advisory Group and the Final Report on the UN Security Council and the Rule of Law. *Max Planck Yearbook of United Nations Law* vol. 12 (2008): p. 409.

Caplan, R. The Security Council and the Administration of War-Torn and Contested Territories. In *The United Nations Security Council and War: The Evolution of Thought and Practice since 1945*. Edited by V. Lowe. (Oxford [United Kingdom]: Oxford University Press, 2008). p. 563.

Cardona LLorens, J. "¿Es necesario un capítulo VI y medio en una carta reformada?" *La ONU y el mantenimiento de la paz en el siglo XXI*. Edited by J. Cardona Llorens. (Valencia [Spain]: Tirant lo Blanch, 2008). p. 181.

Carlson, G. S. An Offer they can't Refuse? The Security Council Tells North Korea to Re-Sign the Nuclear Non-Proliferation Treaty. *Columbia Journal of Transnational Law* vol. 46, iss. 2 (2008): p. 420.

Churchill, R. R. Conflicts between UN Security Council Resolutions and the UN Convention on the Law of the Sea: and their Possible Resolution. *Israel Yearbook on Human Rights* vol. 38 (2008): p. 185.

Ciampi, A. Individual Remedies Against Security Council Targeted Sanctions. *The Italian Yearbook of International Law* vol. 17 (2007) (2008): p. 55.

Corell, H. Reflections on the Security Council and its Mandate to Maintain International Peace and Security. In *Law at War: The Law as it was and the Law as it should be.* Edited by O. Engdahl, P. Wrange, and O. Bring. (Leiden [Netherlands]: Martinus Nijhoff Publishers, 2008). p. 61.

Cortright, D., G. A. Lopez, and L. Gerber-Stellingwerf. The Sanctions Era: Themes and Trends in UN Security Council Sanctions since 1990. In *The United Nations Security Council and War: The Evolution of Thought and Practice since 1945.* Edited by V. Lowe. (Oxford [United Kingdom]: Oxford University Press, 2008). p. 205.

The UN Security Council and the Politics of International Authority. Edited by B. Cronin and I. Hurd . (London [United Kingdom]: Routledge, 2008). 249 p.

Cronin, B. International Consensus and the Changing Legal Authority of the UN Security Council. In *The UN Security Council and the Politics of International Authority.* Edited by B. Cronin and I. Hurd. (London [United Kingdom]: Routledge, 2008). p. 57.

Decaux, E. The Definition of Traditional Sanctions: Their Scope and Characteristics. *Revue internationale de la Croix-Rouge = International Review of the Red Cross* vol. 90, iss. 870 (2008): p. 249.

Del Prado, J. L. G. Private Military and Security Companies and the UN Working Group on the use of Mercenaries. *Journal of Conflict and Security Law* vol. 13, iss. 3 (2008): p. 429.

Dunbabin, J. P. D. The Security Council in the Wings: Exploring the Security Council's Non-Involvement in Wars. In *The United Nations Security Council and War: The Evolution of Thought and Practice since 1945.* Edited by V. Lowe. (Oxford [United Kingdom]: Oxford University Press, 2008). p. 494.

Fry, J. D. Dionysian Disarmament: Security Council WMD Coercive Disarmament Measures and their Legal Implications. *Michigan Journal of International Law* vol. 29, iss. 2 (2008): p. 197.

Gestri, M. Legal Remedies Against Security Council Targeted Sanctions: De Lege Lata and the Lege Ferenda Options for Enhancing the Protection of of the Individual. *The Italian Yearbook of International Law* vol. 17 (2007) (2008): p. 25.

Gottemoeller, R. The Evolution of Sanctions in Practice and Theory. *Survival* vol. 49, iss. 4 (2008): p. 99.

Graubart, J. NGOs and the Security Council: Authority all Around but for Whose Benefit? In *The UN Security Council and the Politics of International Authority.* Edited by B. Cronin and I. Hurd. (London [United Kingdom]: Routledge, 2008). p. 154.

Guilfoyle, D. Piracy Off Somalia: UN Security Council Resolution 1816 and IMO Regional Counter-Piracy Efforts. *International and Comparative Law Quarterly* vol. 57, iss. 3 (2008): p. 690.

Hurd, I. The Strategic use of Liberal Internationalism: Libya and the UN Sanctions, 1992-2003. In *International Security and Conflict.* Edited by B. Russett. (Aldershot [United Kingdom]: Ashgate, 2008). p. 525.

—-. Theories and Tests of International Authority. In *The UN Security Council and the Politics of International Authority.* Edited by B. Cronin and I. Hurd. (London [United Kingdom]: Routledge, 2008). p. 23.

Ingravallo, I. *Il Consiglio di Sicurezza e l'amministrazione diretta di territori*. (Naples [Italy]: Ed. Scientifica, 2008). 243 p.

Johnstone, I. The Security Council as Legislature. In *The UN Security Council and the Politics of International Authority.* Edited by B. Cronin and I. Hurd. (London [United Kingdom]: Routledge, 2008). p. 80.

Johnstone, I. Legislation and Adjudication in the UN Security Council: Bringing Down the Deliberative Deficit. *American Journal of International Law* vol. 102, iss. 2 (2008): p. 275.

Kolb, R. Le contrôle de résolutions contraignantes du Conseil de sécurité des Nations Unies sous l'angle du respect du jus cogens. *Schweizerische Zeitschrift fur internationales und europäisches Recht* vol. 18, iss. 5 (2008): p. 401.

—-. Occupation in Iraq since 2003 and the Powers of the UN Security Council. *Revue internationale de la Croix-Rouge = International Review of the Red Cross* vol. 90, iss. 869 (2008): p. 29.

Krasno, J., and M. Das. The Uniting for Peace Resolution and Other Ways of Circumventing the Authority of the Security Council. In *The UN Security Council and the Politics of International Authority.* Edited by B. Cronin and I. Hurd. (London [United Kingdom]: Routledge, 2008). p. 173.

Lagrange, P. Responsabilité des Etats pour actes accomplis en application du Chapitre VII de la Charte des Nations Unies. *Revue générale de droit international public* vol. 112, iss. 1 (2008): p. 85.

Lapidoth, R. The Legal Effect of Security Council Resolution 1701 (2006) on Cessation of Hostilities in Lebanon. In *Frieden in Freiheit = Peace in liberty = Paix en liberté: Festschrift für Michael Bothe zum 70.* Edited by A. Fischer-Lescano, *et al*. (Baden-Baden [Germany]: Nomos, 2008). p. 187.

Lavranos, N. UN Sanctions and Judicial Review. In *The Europeanisation of International Law: The Status of International Law in the EU and its Member States*. Edited by J. Wouters, A. Nollkaemper, and E. de Wet. (The Hague [The Netherlands]: T. M. C. Asser Press, 2008). p. 185.

Lowe, V. *The United Nations Security Council and War: The Evolution of Thought and Practice since 1945*. (Oxford [United Kingdom]: Oxford University Press, 2008). 793 p.

Luck, E. C. A Council for all Seasons: The Creation of the Security Council and its Relevance Today. In *The United Nations Security Council and War: The Evolution of Thought and Practice since 1945*. Edited by V. Lowe. (Oxford [United Kingdom]: Oxford University Press, 2008). p. 61.

Meerpohl, T. *Individualsanktionen des Sicherheitsrates der Vereinten Nationen: das Sanktionsregime gegen die Taliban und Al-Qaida vor dem Hintergrund des Rechts der VN und der Menschenrechte*. (Munich [Germany]: Utz, 2008). 333 p.

Mégret, F. A Special Tribunal for Lebanon: The UN Security Council and the Emancipation of International Criminal Justice. *Leiden Journal of International Law* vol. 21, iss. 2 (2008): p. 485.

Minogue, E. C. Increasing the Effectiveness of the Security Council's Chapter VII Authority in the Current Situations before the International Criminal Court. *Vanderbilt Law Review* vol. 61, iss. 2 (2008): p. 647.

Mouangué Kobila, J. Le processus d'intervention du Conseil de sécurité dans la lutte contre le terrorisme international. In *Terrorisme et droit international / Académie de Droit International de la Haye = Terrorism and International Law / Hague Academy of International Law*. Edited by M. J. Glennon and S. Sur. (Leiden [The Netherlands]: Nijhoff, 2008). p. 423.

Neusüss, P. *Legislative Massnahmen des UN-Sicherheitsrates im Kampf gegen den internationalen Terrorismus: eine Untersuchung des Inhalts und der Rechtmässigkeit von Resolution 1373 unter besonderer Berücksichtigung der Reaktionen der Staaten*. (Munich [Germany]: Utz, 2008). 367 p.

Nolte, G. The Different Functions of the Security Council with Respect to Humanitarian Law. In *The United Nations Security Council and War: The Evolution of Thought and Practice since 1945*. Edited by V. Lowe. (Oxford [United Kingdom]: Oxford University Press, 2008). p. 519.

Orakhelashvili, A. The Power of the UN Security Council to Determine the Existence of a 'Threat to the Peace'. *The Irish Yearbook of International Law* vol. 1 (2006), iss. 61 (2008): p. 99.

Percy, S. V. The Security Council and the use of Private Force. In *The United Nations Security Council and War: The Evolution of Thought and Practice since 1945*. Edited by V. Lowe. (Oxford [United Kingdom]: Oxford University Press, 2008). p. 624.

Quigley, J. Repatriations of the Displaced Arabs of Palestine and the Meaning of Security Council Resolution 242. *Yearbook of Islamic and Middle Eastern Law* vol. 12 (2008): p. 3.

Röben, V. Managing Risks to Global Stability: The UN Security Council's New-found Role Post Iraq. In *International Law Today: New Challenges and the Need for Reform?* Edited by D. König, *et al*. (Berlin [Germany]: Springer, 2008). p. 51.

Roberts, A. Proposals for UN Standing Forces: A Critical History. In *The United Nations Security Council and War: The Evolution of Thought and Practice since 1945.* Edited by V. Lowe. (Oxford [United Kingdom]: Oxford University Press, 2008). p. 99.

Ross-Nazzal, J. *The U.S. Veto and the Polemics of the Question of Palestine in the United Nations Security Council, 1972-2007.* (Lewiston, New York [United States]: Edwin Mellen Press, 2008). 192 p.

Sandholtz, W. Creating Authority by the Council: The International Criminal Tribunals. In *The UN Security Council and the Politics of International Authority.* Edited by B. Cronin and I. Hurd. (London [United Kingdom]: Routledge, 2008). p. 131.

Sarooshi, D. The Security Council's Authorization of Regional Arrangements to use Force: The Case of NATO. In *The United Nations Security Council and War: The Evolution of Thought and Practice since 1945.* Edited by V. Lowe. (Oxford [United Kingdom]: Oxford University Press, 2008). p. 226.

Scheffer, D. The Security Council and International Law on Military Occupations. In *The United Nations Security Council and War: The Evolution of Thought and Practice since 1945.* Edited by V. Lowe. (Oxford [United Kingdom]: Oxford University Press, 2008). p. 580.

Implementing Resolution 1540: The Role of Regional Organizations Edited by L. Scheinman. (New York, New York [United States]: United Nations, 2008). 164 p.

Schotten, G., and A. Biehler. The Role of the UN Security Council in Implementing International Humanitarian Law and Human Rights Law. In *International Humanitarian Law and Human Rights Law: Towards a New Merger in International Law.* Edited by R. Arnold and N. Quénivet. (Leiden [The Netherlands]: Nijhoff, 2008). p. 309.

Scott, S. V. Climate Change and Peak Oil as Threats to International Peace and Security: Is it Time for the Security Council to Legislate? *Melbourne Journal of International Law* vol. 9, iss. 2 (2008): p. 495.

Shaygan, F. *La comptabilité des sanctions économiques du Conseil de sécurité avec les droits de l'homme et le droit international humanitaire*. (Brussels [Belgium]: Bruylant, 2008). 686 p.

Sicilianos, L.-A. Repenser la réforme du Conseil de sécurité: représentativité, transparence, performance. In *Beyond the UN Charter: Peace, Security and the Role of Justice.* Edited by O. Ribbelink. (The Hague [The Netherlands]: Hague Academic Press, 2008). p. 45.

Tavernier, P. La réforme du Conseil de Sécurité: La réforme est-elle encore possible? *La ONU y el mantenimiento de la paz en el siglo XXI.* Edited by J. Cardona Llorens. (Valencia [Spain]: Tirant lo Blanch, 2008). p. 365.

Tine, A. La stratégie antiterroriste du Conseil: Esquisse d'un bilan provisoire de la mise en œuvre des résolutions 1373 Et 1540. In *Terrorisme et droit international / Académie de Droit International de la Haye = Terrorism and International Law / Hague Academy of International Law*. Edited by M. J. Glennon and S. Sur. (Leiden [The Netherlands]: Nijhoff, 2008). p. 467.

Torres Cazorla, M. I. El derecho de veto en el Consejo de Seguridad de Naciones Unidas: la historia de la válvula de seguridad que paralizó el sistema. *Anuario colombiano de derecho internacional* vol. 1, iss. 1 (2008): p. 49.

Voeten, E. Delegation and the Nature of Security Council Authority. In *The UN Security Council and the Politics of International Authority*. Edited by B. Cronin and I. Hurd. (London [United Kingdom]: Routledge, 2008). p. 43.

—-. Why no UN Security Council Reform? Lessons for and from Institutionalist Theory. In *Multilateralism and Security Institutions in an Era of Globalization*. Edited by D. Bourantonis, K. Ifantis, and P. Tsakonas. (Abingdon [United Kingdom]: Routledge, 2008). p. 288.

Weiss, W. Security Council Powers and the Exigencies of Justice After War. *Max Planck Yearbook of United Nations Law* vol. 12 (2008): p. 45.

Welsh, J. M. The Security Council and Humanitarian Intervention. In *The United Nations Security Council and War: The Evolution of Thought and Practice since 1945*. Edited by V. Lowe. (Oxford [United Kingdom]: Oxford University Press, 2008). p. 535.

Wet, E. de. The Legitimacy of United Nations Security Council Decisions in the Fight Against Terrorism and the Proliferation of Weapons of Mass Destruction: Some Critical Remarks. In *Legitimacy in International Law*. Edited by R. Wolfrum and V. Röben. (Berlin [Germany]: Springer, 2008). p. 131.

Wilson, G. Regional Arrangements as Agents of the UN Security Council: Some African and European Organisations Contrasted. *Liverpool Law Review* vol. 29, iss. 2 (2008): p. 183.

Zaum, D. The Security Council, the General Assembly, and War: The Uniting for Peace Resolution. In *The United Nations Security Council and War: The Evolution of Thought and Practice since 1945*. Edited by V. Lowe. (Oxford [United Kingdom]: Oxford University Press, 2008). p. 154.

C. Intergovernmental organizations related to the United Nations

1. United Nations Food and Agriculture Organization

Lugten, G. Food and Agriculture Organization: The FAO Global Record of Fishing Vessels, Refrigerated Vessels and Fishing Support Vessels. *International Journal of Marine and Coastal Law* vol. 23, iss. 4 (2009): p. 761.

Vázquez Gómez, E. M. La aplicación del concepto 'pesca responsable': un proceso de evolución permanente. *Anuario argentino de derecho internacional* vol. 16 (2008): p. 99.

2. International Atomic Energy Agency

Suleman, A. Bargaining in the Shadow of Violence: The NPT, IAEA, and Nuclear Non-Proliferation Negotiations. *Berkeley Journal of International Law* vol. 26, iss. 1 (2008): p. 206.

3. International Centre for Settlement of Investment Disputes

Rosell, J. The CMS Case: A Lesson for the Future? *Journal of International Arbitration* vol. 25, iss. 4 (2008): p. 493.

Wendlandt, M. SGS v. Philippines and the Role of ICSID Tribunals in Investor-State Contract Disputes. *Texas International Law Journal* vol. 43, iss. 3 (2008): p. 523.

4. International Civil Aviation Organization

Caplan, H. Liability for Third Party Damage on the Ground: Some Fundamental Issues for Consideration by the Council of ICAO Prior to a Diplomatic Conference. *Air and Space Law* vol. 33, iss. 3 (2008): p. 183.

Onidi, O. A Critical Perspective on ICAO. *Air and Space Law* vol. 33, iss. 1 (2008): p. 38.

Tompkins, G. N., Jr. Some Thoughts to Ponder when Considering Whether to Adopt the New Aviation General Risks and Unlawful Interference Conventions Proposed by ICAO. *Air and Space Law* vol. 33, iss. 2 (2008): p. 81.

5. International Labour Organization

Adinolfi, G. ILO Child Labour Standards in International Trade Regulation: The Role of the WTO. In *Child Labour in a Globalized World: A Legal Analysis of ILO Action.* Edited by G. Nesi, L. Nogler, and M. Pertile. (Aldershot [United Kingdom]: Ashgate, 2008). p. 245.

Beqiraj, J. Hazardous Work as a Worst Form of Child Labour: A Comment on Article 3(d) of ILO Convention 182. In *Child Labour in a Globalized World: A Legal Analysis of ILO Action.* Edited by G. Nesi, L. Nogler, and M. Pertile. (Aldershot [United Kingdom]: Ashgate, 2008). p. 177.

Borzaga, M. Limiting the Minimum Age: Convention 138 and the Origin of the ILO's Action in the Field of Child Labour. In *Child Labour in a Globalized World: A Legal Analysis of ILO Action.* Edited by G. Nesi, L. Nogler, and M. Pertile. (Aldershot [United Kingdom]: Ashgate, 2008). p. 39.

Fodella, A. Freedom from Child Labour as a Human Right: The Role of the UN System in Implementing ILO Child Labour Standards. In *Child Labour in a Globalized World: A Legal Analysis of ILO Action.* Edited by G. Nesi, L. Nogler, and M. Pertile. (Aldershot [United Kingdom]: Ashgate, 2008). p. 203.

Fronza, E., and K. Summerer. The Implementation of ILO Child Labour Standards in Domestic Legal Systems: The Role of Criminal Law. In *Child Labour in a Globalized World: A Legal Analysis of ILO Action.* Edited by G. Nesi, L. Nogler, and M. Pertile. (Aldershot [United Kingdom]: Ashgate, 2008). p. 295.

Harrison, J. International Labour Organization. *International Journal of Marine and Coastal Law* vol. 23, iss. 1 (2008): p. 125.

Helfer, L. R. Monitoring Compliance with Unratified Treaties: The ILO Experience. *Law and Contemporary Problems* vol. 71, iss. 1 (2008): p. 193.

Keita, A. The Implementation of ILO Child Labour Standards in Africa and Mali– an Assessment from a Socio-Legal Perspective. In *Child Labour in a Globalized World: A Legal Analysis of ILO Action.* Edited by G. Nesi, L. Nogler, and M. Pertile. (Aldershot [United Kingdom]: Ashgate, 2008). p. 347.

Kooijmans, J. ILO Child Labour Standards in International Trade Regulation: The Role of the WTO. In *Child Labour in a Globalized World: A Legal Analysis of ILO Action.* Edited by G. Nesi, L. Nogler, and M. Pertile. (Aldershot [United Kingdom]: Ashgate, 2008). p. 129.

—-. Prostitution, Pornography, and Pornographic Performances as Worst Forms of Child Labour: A Comment on Article 3(b) of ILO Convention 182. In *Child Labour in a Globalized World: A Legal Analysis of ILO Action.* Edited by G. Nesi, L. Nogler, and M. Pertile. (Aldershot [United Kingdom]: Ashgate, 2008). p. 129.

Kornikova, A. A. International Child Labor Regulation 101: What Corporations Need to Know about Treaties Pertaining to Working Youth. *Brooklyn Journal of International Law* vol. 34, iss. 1 (2008): p. 207.

Kuehnert, D. R. The International Labor Organization and a Possible End to Violence Against Union Members in Colombia. *Washington University Global Studies Law Review* vol. 7, iss. 3 (2008): p. 593.

Child Labour in a Globalized World: A Legal Analysis of ILO Action Edited by G. Nesi, L. Nogler, and M. Pertile. (Aldershot [United Kingdom]: Ashgate, 2008). 467 p.

Noguchi, Y. The use of Children in Illicit Activities as a Worst Form of Child Labour: A Comment on Article 3(c) of ILO Convention 182. In *Child Labour in a Globalized World: A Legal Analysis of ILO Action.* Edited by G. Nesi, L. Nogler, and M. Pertile. (Aldershot [United Kingdom]: Ashgate, 2008). p. 151.

Pantano, F., and R. Salomone. Trade, ILO Child Labour Standards and the Social Clause: Definitions, Doubts and (some) Answers. In *Child Labour in a Globalized World: A Legal Analysis of ILO Action.* Edited by G. Nesi, L. Nogler, and M. Pertile. (Aldershot [United Kingdom]: Ashgate, 2008). p. 323.

Pratap, R. The Implementation of ILO Child Labour Standards in Asia: Overview and Selected Issues. In *Child Labour in a Globalized World: A Legal Analysis of ILO Action.* Edited by G. Nesi, L. Nogler, and M. Pertile. (Aldershot [United Kingdom]: Ashgate, 2008). p. 369.

Rishikesh, D. The Worst Forms of Child Labour: A Guide to ILO Convention 182 and Recommendation 190. In *Child Labour in a Globalized World: A Legal Analysis of ILO Action.* Edited by G. Nesi, L. Nogler, and M. Pertile. (Aldershot [United Kingdom]: Ashgate, 2008). p. 83.

Sanguineti Raymond, W. The Implementation of the ILO's Standards regarding Child Labour in South America: A General Overview and the most Meaningful Achievements. In *Child Labour in a Globalized World: A Legal Analysis of ILO Action.* Edited by G. Nesi, L. Nogler, and M. Pertile. (Aldershot [United Kingdom]: Ashgate, 2008). p. 391.

Sanna, S. Slavery and Practices Similar to Slavery as Worst Forms of Child Labour: A Comment on Article 3(a) of ILO Convention 182. In *Child Labour in a Globalized World: A Legal Analysis of ILO Action.* Edited by G. Nesi, L. Nogler, and M. Pertile. (Aldershot [United Kingdom]: Ashgate, 2008). p. 101.

Schlemmer-Schulte, S. The Contribution of the World Bank in Fostering Respect for ILO Child Labour Standards. In *Child Labour in a Globalized World: A Legal Analysis of ILO Action.* Edited by G. Nesi, L. Nogler, and M. Pertile. (Aldershot [United Kingdom]: Ashgate, 2008). p. 229.

Swepston, L. The Contribution of the ILO Declaration on Fundamental Principles and Rights at Work to the Elimination of Child Labour. In *Child Labour in a Globalized World: A Legal Analysis of ILO Action.* Edited by G. Nesi, L. Nogler, and M. Pertile. (Aldershot [United Kingdom]: Ashgate, 2008). p. 65.

Trebilcock, A., and G. Raimondi. The ILO's Legal Activities Towards the Eradication of Child Labour: An Overview. In *Child Labour in a Globalized World: A Legal Analysis of ILO Action.* Edited by G. Nesi, L. Nogler, and M. Pertile. (Aldershot [United Kingdom]: Ashgate, 2008). p. 17.

6. International Monetary Fund

Stone, R. W. The Scope of IMF Conditionality. *International Organization* vol. 62, iss. 4 (2008): p. 589.

7. United Nations Educational, Scientific and Cultural Organization

Anglin, R. The World Heritage List: Bridging the Cultural Property Nationalism-Internationalism Divide. *Yale Journal of Law and the Humanities* vol. 20, iss. 2 (2008): p. 241.

Bouchenaki, M. Unesco and the Safeguarding of Cultural Heritage in Postconflict Situations: Efforts at Unesco to Establish an Intergovernmental Fund for the Protection of Cultural Property in Times of Conflict. In *Antiquities Under Siege: Cultural Heritage Protection After the Iraq War.* Edited by L. Rothfield. (Lanham, Maryland [United States]: Altamira Press, 2008). p. 207.

Bruner, C. M. Culture, Sovereignty, and Hollywood: UNESCO and the Future of Trade in Cultural Products. *New York University Journal of International Law and Politics* vol. 40, iss. 2 (2008): p. 351.

—-. Unesco, the WTO, and Trade in Cultural Products. In *Essays on the Future of the World Trade Organization.* Edited by J. Chaisse and T. Balmelli. (Lausanne [Switzerland]: Editions interuniversitaires suisses - Edis, 2008). p. 385.

Buzzini, G. and L. Condorelli. List of World Heritage in Danger and Deletion of Property from the World Heritage List. In *The 1972 World Heritage Convention, A Commentary.* Edited by Fancioni, F (Oxford [United Kingdom], Oxford University Press, 2008), p. 199.

Conrad, N. *Öffentliche Kulturförderung und Welthandelsrecht: WTO, UNESCO und das Recht des Staates zur Förderung der Künste*. (Koln [Germany]: Heymann, 2008). 562 p.

Coomans, F. Unesco's Convention Against Discrimination in Education. In *Synergies in Minority Protection: European and International Law Perspectives.* Edited by K. Henrard and R. Dunbar. (Cambridge [United Kingdom]: Cambridge University Press, 2008). p. 297.

Donders, Y. The History of the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions. In *Protection of Cultural Diversity from a European and International Perspective.* Edited by H. Schneider and P. Van den Bossche. (Antwerp [Netherlands]: Intersentia, 2008). p. 1.

Ferchichi, W. La Convention de l'Unesco Concernant La Protection Du Patrimoine Mondial Culturel Et Naturel. In *Le patrimoine culturel de l'humanité / Académie de Droit International de la Haye = The cultural heritage of mankind / Hague Academy of International Law.* Edited by J. A. R. Nafziger and T. Scovazzi. (Leiden [The Netherlands]: Nijhoff, 2008). p. 455.

The 1972 World Heritage Convention, A commentary. Edited by F. Francioni. (Oxford [United Kingdom], Oxford University Press, 2008), 576 p.

Galindo, G. R. B. The Unesco Declaration Concerning the Intentional Destruction of Cultural Heritage. In *Le patrimoine culturel de l'humanité / Académie De Droit International De La Haye = the Cultural Heritage of Mankind / Hague Academy of International Law.* Edited by J. A. R. Nafziger and T. Scovazzi. (Leiden [The Netherlands]: Nijhoff, 2008). p. 399.

Hilf, M. Globaler Handel und kulturelle Vielfalt: WTO gegen UNESCO? In *Wirtschaftliche, soziale und kulturelle Rechte im globalen Zeitalter.* Edited by T. Giegerich and A. Zimmermann. (Berlin [Germany]: Duncker und Humblot, 2008). p. 95.

Kamga, M. K. La Convention pour la protection des biens culturels en cas de conflit armé de 1954 et ses deux Protocoles de 1954 et de 1999. In *Le patrimoine culturel de l'humanité / Académie de Droit International de la Haye = The cultural heritage of mankind / Hague Academy of International Law.* Edited by J. A. R. Nafziger and T. Scovazzi. (Leiden [The Netherlands]: Nijhoff, 2008). p. 817.

Tigroudja, H. Les règles du droit international général applicables à la protection du patrimoine culturel en temps de conflit armé. In *Le patrimoine culturel de l'humanité / Académie de Droit International de la Haye = The cultural heritage of mankind / Hague Academy of International Law.* Edited by J. A. R. Nafziger and T. Scovazzi. (Leiden [The Netherlands]: Nijhoff, 2008). p. 771.

Wouters, J., and B. De Meester. The UNESCO Convention on Cultural Diversity and WTO Law: A Case-Study in Fragmentation of International Law. *Journal of World Trade* vol. 42, iss. 1 (2008): p. 205.

Zhao, Y. The Relationships among the Three Multilateral Regimes Concerning the Underwater Cultural Heritage. In *Le patrimoine culturel de l'humanité / Académie de Droit International de la Haye = the Cultural Heritage of Mankind / Hague Academy of International Law.* Edited by J. A. R. Nafziger and T. Scovazzi. (Leiden [The Netherlands]: Nijhoff, 2008). p. 601.

8. World Bank Group

Ball, R. 'Doing it Quietly': The World Bank's Engagement with Human Rights. *Monash University Law Review* vol. 34, iss. 2 (2008): p. 331.

Carrasco, E. R., and A. K. Guernsey. The World Bank's Inspection Panel: Promoting True Accontability through Arbitration. *Cornell International Law Journal* vol. 41, iss. 3 (2008): p. 577.

Kim, E. T. Unlikely Formation: Contesting and Advancing Asian/African 'Indigenousness' at the World Bank Inspection Panel. *New York University Journal of International Law and Politics* vol. 41, iss. 1 (2008): p. 131.

Munhoz, C. and P. Bohrer. Corruption in the Eyes of the World Bank: Implications for the Institution's Policies and Developing Countries. *Penn State International Law Review* vol. 26, iss. 3 (2008): p. 691.

Pauly, L. W. The United Nations, the Bretton Woods Institutions, and the Reconstruction of a Multilateral Order. In *Global Ordering: Institutions and Autonomy in a Changing World.* Edited by L. W. Pauly and W. D. Coleman. (Vancouver [Canada]: University of British Columbia Press, 2008). p. 23.

Rogers, S. B. The World Bank Voluntary Disclosure Program (VDP): A Distributive Justice Critique. *Columbia Journal of Transnational Law* vol. 46, iss. 3 (2008): p. 709.

Schlemmer-Schulte, S. The Contribution of the World Bank in Fostering Respect for ILO Child Labour Standards. In *Child Labour in a Globalized World: A Legal Analysis of ILO Action.* Edited by G. Nesi, L. Nogler, and M. Pertile. (Aldershot [United Kingdom]: Ashgate, 2008). p. 229.

Smyth, S. World Bank Grants in a Changed World Order: How do we Referee this New Paradigm? *University of Pennsylvania Journal of International Economic Law* vol. 30, iss. 2 (2008): p. 483.

9. World Health Organization

Silver, A. Obstacles to Complying with the World Health Organization's 2005 International Health Regulations. *Wisconsin International Law Journal* vol. 26, iss. 1 (2008): p. 229.

10. World Trade Organization

Adinolfi, G. ILO Child Labour Standards in International Trade Regulation: The Role of the WTO. In *Child Labour in a Globalized World: A Legal Analysis of ILO Action.* Edited by G. Nesi, L. Nogler, and M. Pertile. (Aldershot [United Kingdom]: Ashgate, 2008). p. 245.

Ahn, D. Foe or Friend of GATT Article XXIV: Diversity in Trade Remedy Rules. *Journal of International Economic Law* vol. 11, iss. 1 (2008): p. 107.

Ala'i, P. From the Periphery to the Center? the Evolving WTO Jurisprudence on Transparency and Good Governance. *Journal of International Economic Law* vol. 11, iss. 4 (2008): p. 779.

The World Trade Organization and Trade in Services. Edited by K. Alexander, and M. Andenas. (Leiden [The Netherlands]: Nijhoff, 2008). 1006 p.

Archibald, C. J. Forbidden by the WTO? Discrimination Against a Product when its Creation Causes Harm to the Environment Or Animal Welfare. *Natural Resources Journal* vol. 48, iss. 1 (2008): p. 15.

Berstein, S., and E. Hannah. Non-State Global Standard Setting and the WTO: Legitimacy and the Need for Regulatory Space. *Journal of International Economic Law* vol. 11, iss. 3 (2008): p. 575.

Bhala, R., and D. A. Gantz. WTO Case Review 2007. *Arizona Journal of International and Comparative Law* vol. 25, iss. 1 (2008): p. 75.

Bhatnagar, H., and V. V. Mishra. Workers' Rights Vis-a-Vis the WTO: Do we Need a Paradigm Shift? *Hibernian Law Journal* vol. 8 (2008): p. 185.

Bohne, E. Internationale Organisationen aus verwaltungswissenschaftlicher Sicht am Beispiel der World Trade Organization. In *Verwaltungswissenschaft und Verwaltungspraxis in nationaler und transnationaler Perspektive, Festschrift für Heinrich Siedentopf zum 70.* Edited by S. Magiera, K. Sommermann, and J. Ziller. (Berlin [Germany]: Geburtstag, 2008). p. 3.

Bonzon, Y. Institutionalizing Public Participation in WTO Decision Making: Some Conceptual Hurdles and Avenues. *Journal of International Economic Law* vol. 11, iss. 4 (2008): p. 751.

Bossche, P.v.d. Looking for Proportionality in WTO Law. *Legal Issues of Economic Integration*, iss. 3 (2008): p. 283.

Bronckers, M. Private Appeals to WTO Law: An Update. *Journal of World Trade* vol. 42, iss. 2 (2008): p. 245.

Bruner, C. M. Unesco, the WTO, and Trade in Cultural Products. In *Essays on the Future of the World Trade Organization.* Edited by J. Chaisse and T. Balmelli. (Lausanne [Switzerland]: Editions interuniversitaires suisses - Edis, 2008). p. 385.

Carmody, C. A Theory of WTO Law. *Journal of International Economic Law* vol. 11, iss. 3 (2008): p. 527.

—- Metrics and the Measurement of International Trade: Some Thoughts on the Early Operation of the WTO RTA Transparency Mechanism. *Saint Louis University Public Law Review* vol. 28, iss. 1 (2008): p. 273.

Essays on the Future of the World Trade Organization Edited by J. Chaisse, and T. Balmelli. (Lausanne [Switzerland]: Editions interuniversitaires suisses - Edis, 2008).

Conrad, N. *Öffentliche Kulturförderung und Welthandelsrecht: WTO, UNESCO und das Recht des Staates zur Förderung der Künste.* (Koln [Germany]: Heymann, 2008). 562 p.

Conti, J. A. The Good Case: Decisions to Litigate at the World Trade Organization. *Law and Society Review* vol. 42, iss. 1 (2008): p. 145.

de Vera, E. R. The WTO and Biofuels: The Possibility of Unilateral Sustainability Requirements. *Chicago Journal of International Law* vol. 8, iss. 2 (2008): p. 661.

Ehring, L. Public Access to Dispute Settlement Hearings in the World Trade Organization. *Journal of International Economic Law* vol. 11, iss. 4 (2008): p. 1021.

Emmerson, A. Conceptualizing Security Exceptions: Legal Doctrine Or Political Excuse? *Journal of International Economic Law* vol. 11, iss. 1 (2008): p. 135.

Fröhlich, M., and A. Trautmann. Die rechtsprechung des WTO-Streitbei-legungsgremiums im Jahre 2008. *German Yearbook of International Law* vol. 51 (2008): p. 679.

Fukunaga, Y. Civil Society and the Legitimacy of the WTO Dispute Settlement System. *Brooklyn Journal of International Law* vol. 34, iss. 1 (2008): p. 85.

Gardner, R. N. The Bretton Woods-GATT System After Sixty-Five Years: A Balanced Sheet of Success and Failure. *Columbia Journal of Transnational Law* vol. 47, iss. 1 (2008): p. 31.

Gazzini, T. Can Authoritative Interpretation Under Article IX:2 of the Agreement Establishing the WTO Modify the Rights and Obligations of Members? *International and Comparative Law Quarterly* vol. 57, iss. 1 (2008): p. 169.

Halvorssen, A. M. UNFCCC, the Kyoto Protocol, and the WTO: Brewing Conflicts Or are they Mutually Supportive? *Denver Journal of International Law and Policy* vol. 36, iss. 3-4 (2008): p. 369.

Harrington, A. R. They Fought for Trade but did Trade Win? an Analysis of the Trends among Trade Disputes Brought by WTO Member States before the WTO Dispute Resolution Body. *Journal of International Law* vol. 16, iss. 2 (2008): p. 315.

Jacyk, D. The Integration of Article 25 Arbitration in WTO Dispute Settlement: The Past, Present and Future. *Australian International Law Journal* vol. 15 (2008): p. 235.

Karayigit, M. T. Commonalities and Differences between the Transatlantic Approaches Towards WTO Law. *Legal Issues of Economic Integration* vol. 35, iss. 1 (2008): p. 69.

Lanoszka, A. The Promises of Multilateralism and the Hazards of 'Single Undertaking': The Breakdown of Decision Making within the WTO. *Journal of International Law* vol. 16, iss. 3 (2008): p. 655.

Lakshmanan, V. Traditional Knowledge, the CBD and the TRIPS Regime: Synthesising the Discordant Discourses at the WTO. *International Journal of Intellectual Property Management* vol. 2, iss. 2 (2008): p. 116.

Lanoszka, A. The Promises of Multilateralism and the Hazards of 'Single Undertaking': The Breakdown of Decision Making within the WTO. *Journal of International Law* vol. 16, iss. 3 (2008): p. 655.

Lester, S. United States: Final Anti-Dumping Measures on Stainless Steel from Mexico. *American Journal of International Law* vol. 102, iss. 4 (2008): p. 834.

Marchetti, B. Il sistema di risoluzione delle dispute del WTO. *Rivista trimestrale di diritto pubblico* vol. 58, iss. 4 (2008): p. 933.

Mavroidis, P. C. No Outsourcing of Law? WTO Law as Practiced by WTO Courts. *American Journal of International Law* vol. 102, iss. 3 (2008): p. 421.

Nicely, M. R., and D. T. Hardin. Article 8 of the WTO Safeguards Agreement: Reforming the Right to Rebalance. *St. John's Journal of Legal Commentary* vol. 23, iss. 3 (2008): p. 699.

Oudebji, M. Traitement spécial et différencié et développement dans le contexte de l'Organisation mondiale du commerce. *Revue de la Recherche Juridique: Droit Perspectif*, iss. 2 (2008): p. 997.

Peng, S. How Much Time is Reasonable? the Arbitral Decisions Under Article 21.3(c) of the DSU. *Berkeley Journal of International Law* vol. 26, iss. 1 (2008): p. 323.

Qasim, S. J. Collective Action in the WTO: A 'Developing' Movement Toward Free Trade. *The University of Memphis Law Review* vol. 39, iss. 1 (2008): p. 153.

Roca, D. Étude comparative des droits communautaire et de l'OMC en matière de subventions. *Revue du droit de l'Union Européenne*, iss. 2 (2008): p. 301.

Ruse-Kahn, H. G. A Pirate of the Caribbean? The Attractions of Suspending TRIPs Obligations. *Journal of International Economic Law* vol. 11, iss. 2 (2008): p. 313.

Shadikhodjaev, S. *Retaliation in the WTO Dispute Settlement System*. (Alphen aan den Rijn, The Netherlands: Kluwer Law International, 2009). 312 p.

Shaffer, G. A Structural Theory of WTO Dispute Settlement: Why Institutional Choice Lies at the Center of the GMO Case. *New York University Journal of International Law and Politics* vol. 41, iss. 1 (2008): p. 1.

Shaw, D. The Specter of Water Piracy: The World Trade Organization Threatening Water Security in Developing Nations. *Colorado Journal of International Environmental Law and Policy* vol. 19, iss. 1 (2008): p. 129.

Singh, R. The World Trade Organization and Legitimacy: Evolving a Framework for Bridging the Democratic Deficit. *Journal of World Trade* vol. 42, iss. 2 (2008): p. 347.

Windsor, M. A Fine Balance? Delegation, Standards of Review, and Subsidiarity in WTO Dispute Settlement. *Auckland University Law Review* vol. 14 (2008): p. 41.

Wouters, J., and B. De Meester. The UNESCO Convention on Cultural Diversity and WTO Law: A Case-Study in Fragmentation of International Law. *Journal of World Trade* vol. 42, iss. 1 (2008): p. 205.

The WTO Appellate Body's Activities in 2007. *Journal of International Economic Law* vol. 11, iss. 1 (2008): p. 193.

The WTO: Governance, Dispute Settlement, and Developing Countries. Edited by M.E. Janow, V. Donaldson, and A. Yanovich. (Huntington, New York [United States]: Juris Publishing, 2008). 1110 p.

Yokoi-Arai, M. GATS' Prudential Carve Out in Financial Services and its Relation with Prudential Regulation. *International and Comparative Law Quarterly* vol. 57, iss. 3 (2008): p. 613.

D. Other legal issues

1. Aviation law

Cunningham, M. The Montreal Convention: Can Passengers Finally Recover for Mental Injuries? *Vanderbilt Journal of Transnational Law* vol. 41, iss. 4 (2008): p. 1043.

2. Collective security

Foley, B. J. Reforming the Security Council to Achieve Collective Security. In *Progress in International Law.* Edited by R. A. Miller and R. M. Bratspies. (Leiden [The Netherlands]: Nijhoff, 2008). p. 571.

Gowlland-Debbas, V. Reinterpreting the Charter's Collective Security System. *La ONU y el mantenimiento de la paz en el siglo XXI.* Edited by J. Cardona Llorens. (Valencia [Spain]: Tirant lo Blanch, 2008). p. 273.

Herik, L. van den, and N. Schrijver. Eroding the Primacy of the UN System of Collective Security: The Judgment of the European Court of Justice in the Cases of Kadi and Al Barakaat. *International Organizations Law Review* vol. 5, iss. 2 (2008): p. 329.

Novosseloff, A. L'OSCE et l'ONU: sécurité coopérative et sécurité collective au regard du Chapitre VIII. In *L'OSCE trente ans après l'acte final de Helsinki: sécurité coopérative et dimension humaine.* (Paris [France]: Pedone, 2008). p. 55.

Österdahl, I. The Diluted, Dismantled, Disjointed and Resilient Old Collective Security System, Or, Decision-Making and the use of Force: The Law as it could be. In *Law at War: The Law as it was and the Law as it should be.* Edited by O. Engdahl, P. Wrange, and O. Bring. (Leiden [Netherlands]: Martinus Nijhoff Publishers, 2008). p. 293.

Owen, T. The Uncertain Future of Human Security in the UN. In *Rethinking Human Security.* Edited by M. Goucha and J. Crowley. (Malden, Massachusetts [United States]: Wiley-Blackwell, 2008). p. 113.

Sofaer, A. D. International Security and the use of Force. In *Progress in International Law.* Edited by R. A. Miller and R. M. Bratspies. (Leiden [The Netherlands]: Nijhoff, 2008). p. 541.

3. Commercial arbitration

Bantekas, I. The Foundations of Arbitrability in International Commercial Arbitration. *The Australian Year Book of International Law* vol. 27, iss. 193 (2008): p. 223.

Gama e Souza Jr, L. da. Os princípios do Unidroit na prática arbitral: uma análise de casos, 1994-2007. In *Contratos Internacionales*.(Asunción [Paraguay]: Centro de Estudios de Derecho, Economía y Política (CEDEP), 2008). p. 119.

Journal of International Arbitration: Special New York Convention Number. vol. 25, Special iss. (2008)

Levine, J. Current Trends in International Arbitral Practice as Reflected in the Revision of the UNCITRAL Arbitration Rules. *University of New South Wales Law Journal* vol. 31, iss. 1 (2008): p. 266.

Reinisch, A. The Proliferation of International Dispute Settlement Mechanisms: The Threat of Fragmentation Vs. the Promise of a More Effective System? some Reflection from the Perspective of Investment Arbitration. In *International Law between Universalism and Fragmentation: Festschrift in Honour of Gerhard Hafner.* Edited by I. Buffard, *et al.* (Leiden [The Netherlands]: Martinus Nijhoff, 2008). p. 107.

4. Definition of aggression

DeNicola, C. P. A Shield for the 'Knights of Humanity': The ICC should Adopt a Humanitarian Necessity Defense to the Crime of Aggression. *University of Pennsylvania Journal of International Economic Law* vol. 30, iss. 2 (2008): p. 641.

Petty, K. A. Sixty Years in the Making: The Definition of Aggression for the International Criminal Court. *Hastings International and Comparative Law Review* vol. 31, iss. 2 (2008): p. 531.

Reddi, V. J. The ICC and the Crime of Aggression: A Need to Reconcile the Prerogatives of the SC, the ICC and the ICJ. *International Criminal Law Review* vol. 8, iss. 4 (2008): p. 655.

Remiro Brotons, A. The Three Cores of Aggression. In *International Law between Universalism and Fragmentation: Festschrift in Honour of Gerhard Hafner.* Edited by I. Buffard, *et al.* (Leiden [The Netherlands]: Martinus Nijhoff, 2008). p. 171.

Sayapin, S. The Definition of the Crime of Aggression for the Purpose of the International Criminal Court: Problems and Perspectives. *Journal of Conflict and Security Law* vol. 13, iss. 3 (2008): p. 333.

Weisbord, N. Prosecuting Aggression. *Harvard International Law Journal* vol. 49, iss. 1 (2008): p. 161.

5. Privileges and immunities and diplomatic relations

Alebeek, R. van. *The Immunity of States and their Officials in International Criminal Law and International Human Rights Law.* (Oxford [United Kingdom]: Oxford University Press, 2008). 449 p.

Denza, E. *Diplomatic Law: Commentary on the Vienna Convention on Diplomatic Relations*. 3rd ed. (Oxford [United Kingdom]: Oxford University Press, 2008). 556 p.

Fox, H. *The Law of State Immunity*. 2nd ed. (Oxford [United Kingdom]: Oxford University Press, 2008). 804 p.

—-. The Merits and Defects of the 2004 UN Convention on State Immunity: Gerhard Hafner's Contribution to its Adoption by the United Nations. In *International Law between Universalism and Fragmentation: Festschrift in Honour of Gerhard Hafner*. Edited by I. Buffard, *et al*. (Leiden [The Netherlands]: Martinus Nijhoff, 2008). p. 413.

Miller, A. J. Privileges and Immunities of United Nations Officials. *International Organizations Law Review* vol. 4, iss. 2 (2008): p. 169.

—-. United Nations Experts on Mission and their Privileges and Immunities. *International Organizations Law Review* vol. 4, iss. 1 (2007): p. 11.

Ronzitti, N. L'eccezione dello ius cogens alla regola dell'Immunità degli stati dalla giurisdizione è compatibile con la convenzione delle Nazioni Unite del 2005? In *Accesso Alla Giustizia Dell'Individuo Nel Diritto Internazionale e Dell'Unione Europea*. Edited by F. Francioni, *et al*. (Milan [Italy]: Giuffrè, 2008). p. 45.

Shapiro, N. P. International Law: The Immovable Property Exception to a State's Sovereign Immunity: Permanent Mission of India to the United Nations v. City of New York, 127 S. Ct. 2352 (2007). *Suffolk Transnational Law Review* vol. 31, iss. 3 (2008): p. 719.

Treves, T. Some Peculiarities of the UN Convention on Jurisdictional Immunities of States and their Property: A Footnote on the Codification Technique. In *International Law between Universalism and Fragmentation: Festschrift in Honour of Gerhard Hafner*. Edited by I. Buffard, *et al*. (Leiden [The Netherlands]: Martinus Nijhoff, 2008). p. 503.

6. Disarmament

Anastassov, A. Can the Comprehensive Nuclear-Test-Ban Treaty be Implemented before Entry into Force? *Netherlands International Law Review* vol. 55, iss. 1 (2008): p. 73.

Fois, P. Il consenso ad obbligarsi nel trattato sulla non-proliferazione nucleare. *Rivista di diritto internazionale* vol. 90, iss. 4 (2008): p. 39.

Fry, J. D. Dionysian Disarmament: Security Council WMD Coercive Disarmament Measures and their Legal Implications. *Michigan Journal of International Law* vol. 29, iss. 2 (2008): p. 197.

Holtom, P. *Transparency in Transfers of Small Arms and Light Weapons: Reports to the United Nations Register of Conventional Arms, 2003-2006*. (Solna [Sweden]: Stockholm International Peace Research Institute (SIPRI), 2008). 58 p.

Implementing Resolution 1540: The Role of Regional Organizations. Edited by Scheinman, L. (New York, New York [United States]: United Nations, 2008). 164 p.

Suleman, A. Bargaining in the Shadow of Violence: The NPT, IAEA, and Nuclear Non-Proliferation Negotiations. *Berkeley Journal of International Law* vol. 26, iss. 1 (2008): p. 206.

7. Environmental questions

Archibald, C. J. Forbidden by the WTO? Discrimination Against a Product when its Creation Causes Harm to the Environment Or Animal Welfare. *Natural Resources Journal* vol. 48, iss. 1 (2008): p. 15.

Atapattu, S. Global Climate Change: Can Human Rights (and Human Beings) Survive this Onslaught? *Colorado Journal of International Environmental Law and Policy* vol. 20 (2008): p. 35.

Bekkhus, N. B. Kyoto and Beyond International Burden-Sharing in the Fight Against Climate Change. *Studia diplomatica* vol. 59, iss. 1 (2008): p. 177.

Boyle, A. Between Process and Substance: Sustainable Development in the Jurisprudence of International Courts and Tribunals. In *Sustainable Development in International and National Law: What did the Brundtland Report do to Legal Thinking and Legal Development, and Where can we Go from here?* Edited by H. C. Bugge and C. Voigt. (Groningen [The Netherlands]: Europa Law, 2008). p. 201.

Brauch, H. G. Conceptualising the Environmental Dimension of Human Security in the UN. In *Rethinking Human Security.* Edited by M. Goucha and J. Crowley. (Malden, Massachusetts [United States]: Wiley-Blackwell, 2008). p. 19.

Charnovitz, S. Toward a World Environment Organization: Reflections upon a Vital Debate. In *International Environmental Politics. Vol.4.* Edited by R. B. Mitchell. (Los Angeles, California [United Nations]: SAGE, 2008). p. 173.

Clarke, M. *Post-Kyoto: Designing the Next International Climate Change Protocol*. (New York, New York [United States]: Nova Science, 2008). 158 p.

Cordonier Segger, M. Sustainable Development in International Law. In *Sustainable Development in International and National Law: What did the Brundtland Report do to Legal Thinking and Legal Development, and Where can we Go from here?* Edited by H. C. Bugge and C. Voigt. (Groningen [The Netherlands]: Europa Law, 2008). p. 85.

Depledge, J. Crafting the Copenhagen Consensus: Some Reflections. *Review of European Community and International Environmental Law* vol. 17, iss. 2 (2008): p. 154.

Fuchs, C. UN Convention to Combat Desertification: Recent Developments. *Max Planck Yearbook of United Nations Law* vol. 12 (2008): p. 287.

Haas, P. M., M. A. Levy, and E. A. Parson. Appraising the Earth Summit: How should we Judge UNCED's Success? In *International Environmental Politics. Vol.4.* Edited by R.B. Mitchell. (Los Angeles, California [United Nations]: SAGE, 2008). p. 65.

Halvorssen, A. M. Global Response to Climate Change: From Stockholm to Copenhagen. *Denver University Law Review* vol. 85, iss. 4 (2008): p. 841.

Halvorssen, A. M. UNFCCC, the Kyoto Protocol, and the WTO: Brewing Conflicts Or are they Mutually Supportive? *Denver Journal of International Law and Policy* vol. 36, iss. 3-4 (2008): p. 369.

Mensah, T. A. Using Judicial Bodies for the Implementation and Enforcement of International Environmental Law. In *International Law between Universalism and Fragmentation : Festschrift in Honour of Gerhard Hafner.* Edited by I. Buffard, *et al.* (Leiden [The Netherlands]: Martinus Nijhoff, 2008). p. 797.

Rajamani, L. From Berlin to Bali and Beyond: Killing Kyoto Softly? *International and Comparative Law Quarterly* vol. 57, iss. 4 (2008): p. 909.

Reynaers Kini, E. *The Precautionary Principle, Multilateral Treaties and the Formation of Customary International Law: A Symptom of a Larger Conundrum?* (Lugano: Editions Interuniversitaires suisses EDIS, 2008). 174 p.

Sadat, A. Some Legal Aspects of the Bali Summit on Climate Change. *Indian Journal of International Law* vol. 48, iss. 1 (2008): p. 105.

Sampaio, R. Silveira da Rocha. Seeing the Forest for the Treaties: The Evolving Debates on Forest and Forestry Activities Under the Clean Development Mechanism Ten Years After the Kyoto Protocol. *Fordham International Law Journal* vol. 31, iss. 3 (2008): p. 634.

Schrijver, N. Development: The Neglected Dimension in the Post-Rio International Law of Sustainable Development. In *Sustainable Development in International and National Law: What did the Brundtland Report do to Legal Thinking and Legal Development, and Where can we Go from here?* Edited by H. C. Bugge and C. Voigt. (Groningen [The Netherlands]: Europa Law, 2008). p. 221.

Spence, C. Great Expectations: Understanding Bali and the Climate Change Negotiations Process. *Review of European Community and International Environmental Law* vol. 17, iss. 2 (2008): p. 142.

Stein, J. von. The International Law and Politics of Climate Change: Ratification of the United Nations Framework Convention and the Kyoto Protocol. *Journal of Conflict Resolution* vol. 52, iss. 2 (2008): p. 243.

Székely, A. The Promise of the Brundtland Report: Honored Or Betrayed? *Pacific McGeorge Global Business and Development Law Journal* vol. 21, iss. 2 (2008): p. 159.

Van der Zwaag, D. L., and A. Powers. The Protection of the Marine Environment from Land-Based Pollution and Activities: Gauging the Tides of Global and Regional Governance. *The International Journal of Marine and Coastal Law* vol. 23, iss. 3 (2008): p. 423.

Van Hecke, K. The Flexible Mechanism Under the Kyoto Protocol. *Studia diplomatica* vol. 61, iss. 1 (2008): p. 149.

—-. From Kyoto to Copenhagen: Towards an International Climate Change Regime Beyond 2012. *Studia diplomatica* vol. 59, iss. 1 (2008): p. 199.

Voigt, C. Climate Change and the Mandate of Sustainable Development: Observations from a Legal Perspective. In *Sustainable Development in International and National Law: What did the Brundtland Report do to Legal Thinking and Legal Development, and Where can we Go from here?* Edited by H. C. Bugge and C. Voigt. (Groningen [The Netherlands]: Europa Law, 2008). p. 521.

Voigt, C. *Sustainable Development as a Principle of International Law: Resolving Conflicts between Climate Measures and WTO Law.* (Leiden [the Netherlands]: Martinus Nijhoff Publishers, 2008). 426 p.

Winter, G. A Fundament and Two Pillars: The Concept of Sustainable Development 20 Years After the Brundtland Report. In *Sustainable Development in International and National Law: What did the Brundtland Report do to Legal Thinking and Legal Development, and Where can we Go from here?* Edited by H. C. Bugge and C. Voigt. (Groningen [The Netherlands]: Europa Law, 2008). p. 23.

8. Financing

Haake, S. U.N. Dues: Default Ruse. *Tulane Journal of International and Comparative Law* vol. 17, iss. 1 (2008): p. 39.

9. Human rights

Abramson, B. *Commentary on the United Nations Convention on the Rights of the Child: Article 2: The Right of Non-Discrimination*. (Leiden [The Netherlands]: Nijhoff, 2008). 153 p.

Abril Stoffels, R. El impulso del Secretario General y la implicación del Consejo de Seguridad de las Naciones Unidas en el respecto de los derechos de la infancia en los conflictos armados: el mecanismo establecido en la resolución 1261. In *Protección de personas y grupos vulnerables: especial referencia al derecho internacional y europeo.* Edited by J. Ferrer Lloret and S. Sanz Caballero. (Valencia [Spain]: Tirant lo Blanch, 2008). p. 33.

Aggelen, J. van. Implementation of Article 28 of the Universal Declaration of Human Rights by the U.N. Conferences in the 1990s. *Hamline Journal of Public Law and Policy* vol. 30, iss. 1 (2008): p. 1.

Alston, P., J. Morgan-Foster, and W. Abresch. The Competence of the UN Human Rights Council and its Special Procedures in Relation to Armed Conflicts: Extrajudicial Executions in the 'War on Terror'. *European Journal of International Law* vol. 19, iss. 1 (2008): p. 183.

Human Rights, Intervention and the use of Force Edited by Alston. P., and E. Macdonald. (Oxford [United Kingdom]: Oxford University Press, 2008). 286 p.

Anderson, K. Violence Against Women: State Responsibilities in International Human Rights Law to Address Harmful 'Masculinities'. *Netherlands Quarterly of Human Rights* vol. 26, iss. 2 (2008): p. 173.

Bates, E. Avoiding Legal Obligations Created by Human Rights Treaties. *International and Comparative Law Quarterly* vol. 57, iss. 4 (2008): p. 751.

Changing Perceptions of Sovereignty and Human Rights: Essays in Honour of Cees Flinterman Edited by I. Boerefijn, and J. Goldschmidt. (Antwerp [Netherlands]: Intersentia, 2008). 582 p.

Bossuyt, M. Témoignage d'une présence belge au sein des organes des Nations Unies en matière de droits de l'homme. *Revue trimestrielle des droits de l'homme*, iss. 74 (2008): p. 329.

Boven, T. van. Five Years After Strengthening the United Nations: Recasting the Office of the High Commissioner for Human Rights. In *Changing Perceptions of Sovereignty and Human Rights: Essays in Honour of Cees Flinterman.* Edited by I. Boerefijn and J. Goldschmidt. (Antwerp [Netherlands]: Intersentia, 2008). p. 145.

Breen, C. Revitalising the United Nations Human Rights Special Procedures Mechanisms as a Means of Achieving and Maintaining International Peace and Security. *Max Planck Yearbook of United Nations Law* vol. 12 (2008): p. 177.

Callejon, C. *La réforme de la Commission des Droits de l'Homme des Nations Unies: de la Commission au Conseil des Droits de l'Homme*. (Paris [France]: Pedone, 2008). 427 p.

Cantwell, N., and A. Holzscheiter. *Commentary on the United Nations Convention on the Rights of the Child: Article 20: Children Deprived of their Family Environment*. (Leiden [The Netherlands]: Nijhoff, 2008). 68 p.

Carazo, M. P. Enhancing Human Rights Protection through Procedure: Procedural Rights and Guarantees Derived from Substantial Norms in Human Rights Treaties. In *Progress in International Law.* Edited by R. A. Miller and R. M. Bratspies. (Leiden [The Netherlands]: Nijhoff, 2008). p. 793.

Cardona Llorens, J., and A. Sanjosé Gil. Un Cambio De Paradigma En La Protección De Los Derechos Humanos: La Convención De 2006 Sobre Los Derechos De Las Personas Con Discapacidad. In *Protección de personas y grupos vulnerables: especial referencia al derecho internacional y europeo.* Edited by J. Ferrer Lloret and S. Sanz Caballero. (Valencia [Spain]: Tirant lo Blanch, 2008). p. 165.

Cerone, J. Inappropriate Renderings: The Danger of Reductionist Resolutions. *Brooklyn Journal of International Law* vol. 33, iss. 2 (2008): p. 357.

Chirwa, D. M. Combating Child Poverty: The Role of Economic, Social and Cultural Rights. In *Children's Rights in Africa: A Legal Perspective.* Edited by J. Sloth-Nielsen. (Burlington, Vermont [United States]: Ashgate, 2008). p. 91.

Christodoulidou, T. *The use of Force and the Promotion and Protection of Human Rights*. (Brussels [Belgium]: Bruylant, 2008). 305 p.

Corcoran, R. A. Justice for the Forgotten: Saving the Women of Darfur. *Boston College Third World Law Journal* vol. 28, iss. 1 (2008): p. 203.

Davis, M. Indigenous Struggles in Standard-Setting: The United Nations Declaration on the Rights of Indigenous Peoples. *Melbourne Journal of International Law* vol. 9, iss. 2 (2008): p. 439.

Desmet, E. The UN Basic Principles and Guidelines on the Right to a Remedy and Reparation: A Landmark Or Window-Dressing? An Analysis with Special Attention to the Situation of Indigenous Peoples. *South African Journal on Human Rights* vol. 24, iss. 1 (2008): p. 71.

Dhommeaux, J. Droits et diversité culturels dans les instruments internationaux du système des Nations Unies. *Annuaire international des droits de l'homme = International Yearbook on Human Rights* vol. 3 (2008): p. 175.

Donders, Y. The UN Declaration on the Rights of Indigenous Peoples: A Victory for Cultural Autonomy? In *Changing Perceptions of Sovereignty and Human Rights: Essays in Honour of Cees Flinterman.* Edited by I. Boerefijn and J. Goldschmidt. (Antwerp [Netherlands]: Intersentia, 2008). p. 99.

Edwards, A. The Optional Protocol to the Convention Against Torture and the Detention of Refugees. *International and Comparative Law Quarterly* vol. 57, iss. 4 (2008): p. 789.

Farha, L. Committee on the Elimination of Discrimination Against Women: Women Claiming Economic, Social and Cultural Rights: The CEDAW Potential. In *Social Rights Jurisprudence: Emerging Trends in International and Comparative Law.* Edited by M. Langford. (Cambridge [United Kingdom]: Cambridge University Press, 2008). p. 553.

Friberg, E., and G. Fox. The Activities of the United Nations Independent Expert on Minority Issues (July 2006-December 2007). *European Yearbook of Minority Issues* vol. 6 (2008): p. 461.

Fromherz, C. J. Indigenous Peoples' Courts: Egalitarian Juridical Pluralism, Self-Determination, and the United Nations Declaration on the Rights of Indigenous Peoples. *University of Pennsylvania Law Review* vol. 156, iss. 5 (2008): p. 1341.

Ghandhi, S. The Human Rights Committee of the International Covenant on Civil and Political Rights: Practice and Procedure in the New Millennium. *Indian Journal of International Law* vol. 48, iss. 2 (2008): p. 208.

Gibson, J. The UDHR and the Group: Individual and Community Rights to Culture. *Hamline Journal of Public Law and Policy* vol. 30, iss. 1 (2008): p. 285.

Grahn-Farley, M. Neutral Law and Eurocentric Lawmaking: A Postcolonial Analysis of the U.N. Convention on the Rights of the Child. *Brooklyn Journal of International Law* vol. 34, iss. 1 (2008): p. 1.

Gueldich, H., and I. Belahouene. La violation des droits de l'homme justifie-t-elle le recours à la force? In *Les droits de l'homme: une nouvelle cohérence pour le droit international? Rencontre dédiée à la mémoire de Dali Jazi.* Edited by R. B. Achour and S. Laghmani. (Paris [France]: Pedone, 2008). p. 309.

International Migration Law: No. 15: Human Rights of Migrant Children. (Geneva [Switzerland]: International Organization for Migration, 2008). 382 p.

Kerbrat, Y. Aspects de droit international général dans la pratique des comités établis au sein des Nations Unies dans le domaine des droits de l'homme (2006-2007). *Annuaire français de droit international* vol. 53 (2007) (2008): p. 584.

Langford, M., and J. A. King. Committee on Economic, Social and Cultural Rights: Past, Present and Future. In *Social Rights Jurisprudence: Emerging Trends in International and Comparative Law.* Edited by M. Langford. (Cambridge [United Kingdom]: Cambridge University Press, 2008). p. 477.

Lempinen, M. The United Nations Human Rights Council: The Next Victim of Illusions and False Expectations. *Nordisk tidsskrift for menneskerettigheter* vol. 26, iss. 2 (2008): p. 182.

Lord, J. E., and M. A. Stein. The Domestic Incorporation of Human Rights Law and the United Nations Convention on the Rights of Persons with Disabilities. *Washington Law Review* vol. 83, iss. 4 (2008): p. 449.

MacDougall, G. The United Nations Independent Expert on Minority Issues. In *Synergies in Minority Protection: European and International Law Perspectives.* Edited by K. Henrard and R. Dunbar. (Cambridge [United Kingdom]: Cambridge University Press, 2008). p. 81.

Mansson, K. UN Peace Operations and Security Council Resolutions: A Tool for Measuring the Status of International Human Rights Law? *Netherlands Quarterly of Human Rights* vol. 26, iss. 1 (2008): p. 79.

Marcos, M. G. The Universal Declaration of Human Rights and Constitutional Adjudication: Challenges to Cosmopolitan Law. *Hamline Journal of Public Law and Policy* vol. 30, iss. 1 (2008): p. 245.

Marcovich, M. *Les Nations Désunies: comment l'ONU enterre les droits de l'homme*. (Paris [France]: Éd. Jacob-Duvernet, 2008). 187 p.

Márquez Carrasco, C., and I. Nifosi-Sutton. The UN Human Rights Council: Reviewing its First Year. *Anuario de acción humanitaria y derechos humanos = Yearbook on Humanitarian Action and Human Rights* vol. 2007 (2008): p. 101.

Mattar, M. Y. Comparative Models of Reporting Mechanisms on the Status of Trafficking in Human Beings. *Vanderbilt Journal of Transnational Law* vol. 41, iss. 5 (2008): p. 1355.

McBeth, A. Every Organ of Society: The Responsibility of Non-State Actors for the Realization of Human Rights. *Hamline Journal of Public Law and Policy* vol. 30, iss. 1 (2008): p. 33.

Mégret, F. The Disabilities Convention: Human Rights of Persons with Disabilities Or Disabilities Rights? *Human Rights Quarterly* vol. 30, iss. 2 (2008): p. 494.

Mitoma, G. T. Civil Society and International Human Rights: The Commission to Study the Organization of Peace and the Origins of the UN Human Rights Regime. *Human Rights Quarterly* vol. 30, iss. 3 (2008): p. 607.

Mukherjee, A. *Torture and the United Nations: Charter and Treaty-Based Monitoring.* (London [United Kingdom]: Cameron May, 2008). 330 p.

Murray, R. National Preventive Mechanisms Under the Optional Protocol to the Torture Convention: One Size Does Not Fit all. *Netherlands Quarterly of Human Rights* vol. 26, iss. 4 (2008): p. 485.

Nowak, M., E. McArthur, and K. Buchinger. *The United Nations Convention Against Torture: A Commentary*. (Oxford [United Kingdom]: Oxford University Press, 2008). 1649 p.

Oberleitner, G. A Decade of Mainstreaming Human Rights in the UN: Achievements, Failures, Challenges. *Netherlands Quarterly of Human Rights* vol. 26, iss. 3 (2008): p. 359.

Ondo, T. La protection de l'accusé devant les juridictions pénales internationales. *Revue trimestrielle des droits de l'homme*, iss. 73 (2008): p. 87.

Oostenbrink, T. D. J. The Reform of the Thematic Treaty Mechanisms of the United Nations. In *Changing Perceptions of Sovereignty and Human Rights: Essays in Honour of Cees Flinterman*. Edited by I. Boerefijn and J. Goldschmidt. (Antwerp [Netherlands]: Intersentia, 2008). p. 161.

Palacios, A., and M. Walls. Changing the Paradigm: The Potential Impact of the United Nations Convention on the Rights of Persons with Disabilities. *The Irish Yearbook of International Law* vol. 1 (2006) (2008): p. 121.

Parker, C., and L. Clements. The UN Convention on the Rights of Persons with Disabilities: A New Right to Independent Living? *European Human Rights Law Review* vol. 2008, iss. 4 (2008): p. 508.

Prasad, V. The UN Declaration on the Rights of Indigenous Peoples: A Flexible Approach to Addressing the Unique Needs of Varying Populations. *Chicago Journal of International Law* vol. 9, iss. 1 (2008): p. 297.

Prouvez, N. Committee on the Elimination of Racial Discrimination: Confronting Racial Discrimination and Inequality in the Enjoyment of Economic, Social and Cultural Rights. In *Social Rights Jurisprudence: Emerging Trends in International and Comparative Law*. Edited by M. Langford. (Cambridge [United Kingdom]: Cambridge University Press, 2008). p. 517.

Rajesh, A. S. Children in Conflict with the Law Or the Law in Conflict with Children: Rehabilitation Rhetoric. *Indian journal of international law* vol. 48, iss. 4 (2008): p. 619.

Ramcharan, B. G. *The Protection Roles of UN Human Rights Special Procedures*. (Leiden [The Netherlands]: Nijhoff, 2009). 213 p.

Reich, J. Due Process and Sanctions Targeted Against Individuals Pursuant to U.N. Resolution 1267 (1999). *The Yale Journal of International Law* vol. 33, iss. 2 (2008): p. 505.

Rodríguez Rubio, C. La eficacia de las resoluciones del Comité de Derechos Humanos de Naciones Unidas. In *Las tensiones entre la criminalidad internacional y las garantías propias de un estado de derecho en un mundo globalizado*. Edited by A. Cuerda Riezu. (Madrid [Spain]: Dykinson, 2008). p. 147.

Schabas, W. A. The United Nations and Abolition of the Death Penalty. In *Against the Death Penalty: International Initiatives and Implications*. Edited by J. Yorke. (Farnham [United Kingdom]: Ashgate, 2008). p. 9.

Scheinin, M. Human Rights Committee: Not Only a Committee on Civil and Political Rights. In *Social Rights Jurisprudence: Emerging Trends in International and Comparative Law.* Edited by M. Langford. (Cambridge [United Kingdom]: Cambridge University Press, 2008). p. 540.

Sepper, E. Confronting the 'Sacred and Unchangeable': The Obligation to Modify Cultural Patterns Under the Women's Discrimination Treaty. *University of Pennsylvania Journal of International Economic Law* vol. 30, iss. 2 (2008): p. 585.

Ssenyonjo, M. State Reservations to the ICESCR: A Critique of Selected Reservations. *Netherlands Quarterly of Human Rights* vol. 26, iss. 3 (2008): p. 315.

Stewart, N. F. International Protection of Human Rights: The United Nations System. *The International Journal of Human Rights* vol. 12, iss. 1 (2008): p. 89.

Thio, L. The United Nations Working Group on Minorities. In *Synergies in Minority Protection: European and International Law Perspectives.* Edited by K. Henrard and R. Dunbar. (Cambridge [United Kingdom]: Cambridge University Press, 2008). p. 46.

Tladi, D. Strict Positivism, Moral Arguments, Human Rights and the Security Council: South Africa and the Myanmar Vote. *African Human Rights Law Journal* vol. 8, iss. 1 (2008): p. 23.

Udombana, N. J. Mission Accomplished? An Impact Assessment of the UDHR in Africa. *Hamline Journal of Public Law and Policy* vol. 30, iss. 1 (2008): p. 335.

Vengoechea-Barrios, J. The Universal Periodic Review: A New Hope for International Human Rights Law Or a Reformulation of Errors of the Past? *International Law: revista colombiana de derecho internacional* vol. 12 (2008): p. 101.

Vibhute, K. I. The Struggle for Upholding Human Dignity of Victims of Enforced Disappearance: Some Reflections on the Normative and Institutional Framework. *Indian Journal of International Law* vol. 48, iss. 3 (2008): p. 333.

Viégas-Silva, M. El nuevo Consejo de Derechos humanos de la organización de las Naciones Unidas. *International Law: revista colombiana de derecho internacional* vol. 12 (2008): p. 35.

Vité, S., and H. Boechat. *Commentary on the United Nations Convention on the Rights of the Child: Article 21: Adoption.* (Leiden [The Netherlands]: Nijhoff, 2008). 62 p.

Von Bernstorff, J. The Changing Fortunes of the Universal Declaration of Human Rights: Genesis and Symbolic Dimensions of the Turn to Rights in International Law. *European Journal of International Law* vol. 19, iss. 5 (2008): p. 903.

Vreeland, J. R. Political Institutions and Human Rights: Why Dictatorships Enter into the United Nations Convention Against Torture. *International Organization* vol. 62, iss. 1 (2008): p. 65.

Vyver, J. D. van der. The Binding Force of Economic and Social Rights Listed in the Universal Declaration of Human Rights. *Hamline Journal of Public Law and Policy* vol. 30, iss. 1 (2008): p. 125.

Wiessner, S. Indigenous Sovereignty: A Reassessment in Light of the UN Declaration on the Rights of Indigenous Peoples. *Vanderbilt Journal of Transnational Law* vol. 41, iss. 4 (2008): p. 1141.

Zanghi, C. De la Commission au Conseil des Droits de l'Homme des Nations Unies, une réforme réalisée. In *Les droits de l'homme: une nouvelle cohérence pour le droit international? Rencontre dédiée à la mémoire de Dali Jazi*. Edited by R. B. Achour and S. Laghmani. (Paris [France]: Pedone, 2008). p. 309.

Zani, M. La réforme du système conventionnel de protection des Droits de l'Homme: réflexion sur la nécessité d'un organe conventionnel permanent unifié. *Études internationales* vol. 109, iss. 4 (2008): p. 92.

—-. La Convention de l'O.N.U. relative aux droits des personnes handicapées. *Revue de droit international et de droit comparé* vol. 85, iss. 4 (2008): p. 511.

—-. Réflexion sur le Conseil des droits de l'homme des Nations Unies. *Revue de droit international de sciences diplomatiques et politiques* vol. 86, iss. 3 (2008): p. 299.

10. International administrative law

Amerashinghe, C. F. International Institutional Law -- A Point of View. *International Organizations Law Review* vol. 5, iss. 1 (2008): p. 143.

Axenidou, A. An Account of Accountability. *International Administrative Tribunals in a Changing World: United Nations Administrative Tribunal Conference: Organized Under the Auspices of the Executive Office of the Secretary-General, New York, Friday, 9 November 2007.* Edited by K. Papanikolaou and M. Hiskaki. (London [United Kingdom]: Esperia Publications, 2008). p. 221.

Battini, S. Political Fragmentation and Administrative Integration: The Role of the International Civil Service. *International Administrative Tribunals in a Changing World: United Nations Administrative Tribunal Conference: Organized Under the Auspices of the Executive Office of the Secretary-General, New York, Friday, 9 November 2007.* Edited by K. Papanikolaou and M. Hiskaki. (London [United Kingdom]: Esperia Publications, 2008). p. 181.

Baxter, A. K. and S. Flogaitis. What Process is due? The Sokoloff Case. *International Administrative Tribunals in a Changing World: United Nations Administrative Tribunal Conference: Organized Under the Auspices of the Executive Office of the Secretary-General, New York, Friday, 9 November 2007.* Edited by K. Papanikolaou and M. Hiskaki. (London [United Kingdom]: Esperia Publications, 2008). p. 129.

Goh J. S. Access to Justice at the United Nations Via the Redesign Panel's Report. *International Administrative Tribunals in a Changing World: United Nations Administrative Tribunal Conference: Organized Under the Auspices of the Executive Office of the Secretary-General, New York, Friday, 9 November 2007.* Edited by K. Papanikolaou and M. Hiskaki. (London [United Kingdom]: Esperia Publications, 2008). p. 141.

Klabbers, J. The Paradox of International Institutional Law. *International Organizations Law Review* vol. 5, iss. 1 (2008): p. 151.

Münch, W. The Revision of the System of Administration of Justice in the United Nations Secretariat: The Current State of Affairs in the Light of the Recommendations of the Secretary-General's Redesign Panel. In *Frieden in Freiheit = Peace in liberty = Paix en liberté: Festschrift für Michael Bothe zum 70.* Edited by A. Fischer-Lescano, *et al.* (Baden-Baden [Germany]: Nomos, 2008). p. 205.

International Administrative Tribunals in a Changing World: United Nations Administrative Tribunal Conference: Organized Under the Auspices of the Executive Office of the Secretary-General, New York, Friday, 9 November 2007 Edited by K. Papanikolaou, and M. Hiskaki. (London [United Kingdom]: Esperia Publications, 2008). 255 p.

Reinisch, A., and C. Knahr. From the United Nations Administrative Tribunal to the United Nations Appeals Tribunal: Reform of the Administration of Justice System within the United Nations. *Max Planck Yearbook of United Nations Law* vol. 12 (2008): p. 447.

Ruzié, D. Jurisprudence du Tribunal adminstratif des Nations Unies. *Annuaire français de droit international* vol. 53 (2007) (2008): p. 474.

Stern, B. The Implied Powers of UNAT in the Discharge of its Jurisdictional Function. *International Administrative Tribunals in a Changing World: United Nations Administrative Tribunal Conference: Organized Under the Auspices of the Executive Office of the Secretary-General, New York, Friday, 9 November 2007.* Edited by K. Papanikolaou and M. Hiskaki. (London [United Kingdom]: Esperia Publications, 2008). p. 73.

Struyvenberg, M. International Administrative Law: Due Process in the Justice System. *International Administrative Tribunals in a Changing World: United Nations Administrative Tribunal Conference: Organized Under the Auspices of the Executive Office of the Secretary-General, New York, Friday, 9 November 2007.* Edited by K. Papanikolaou and M. Hiskaki. (London [United Kingdom]: Esperia Publications, 2008). p. 173.

Vicien-Milburn, M. The Independence of the UN Administrative Tribunal and its Legacy. *International Administrative Tribunals in a Changing World: United Nations Administrative Tribunal Conference: Organized Under the Auspices of the Executive Office of the Secretary-General, New York, Friday, 9 November 2007.* Edited by K. Papanikolaou and M. Hiskaki. (London [United Kingdom]: Esperia Publications, 2008). p. 105.

Ziadé, N. G. *Problems of International Administrative Law: On the Occasion of the Twentieth Anniversary of the World Bank Administrative Tribunal*. (Leiden [The Netherlands]: Martinbus Nijhoff Publishers, 2008). 255 p.

11. International commercial law

Asariotis, R. Burden of Proof and Allocation of Liability for Loss due to a Combination of Causes Under the New Rotterdam Rules. *The Journal of International Maritime Law* vol. 14, iss. 6 (2008): p. 537.

Baatz, Y. Jurisdiction and Arbitration Under the Rotterdam Rules. *The Journal of International Maritime Law* vol. 14, iss. 6 (2008): p. 608.

Berlingieri, F., S. Zunarelli, and C. Alvisi. La nuova Convenzione UNCITRAL sul trasporto internazionale di Merci 'Wholly or Partly by Sea' (Regole di Rotterdam). *Diritto marittimo* vol. 10, iss. 4 (2008): p. 1161.

Bonell, M. J. The CISG, European Contract Law, and the Development of a World Contract Law. *American Journal of Comparative Law* vol. 56, iss. 1 (2008): p. 1.

Carette, N. Direct Contractual Claim of the Sub-Buyer and International Sale of Goods: Applicable Law and Applicability of the CISG. *European Review of Private Law* vol. 16, iss. 4 (2008): p. 583.

Castellani, L. G. Assurer l'harmonisation du droit des contrats aux niveaux régional et mondial: la Convention des Nations Unies sur les contrats de vente internationale de marchandises et le rôle de la CNUDCI. *Uniform Law Review* vol. 13, iss. 1-2 (2008): p. 101.

Delebecque, P. Le projet CNUDCI, suite et fin: La Convention des Nations Unies sur le contrat de transport international de marchandises entierement ou partiellement par mer. *Droit Maritime Français* vol. 60, iss. 690 (2008): p. 211.

Diamond, A. The Next Sea Carriage Convention? *Lloyd's Maritime and Commercial Law Quarterly*, iss. 2 (2008): p. 135.

—-. Ensuring Harmonisation of Contract Law at Regional and Global Level: The United Nations Convention on Contracts for the International Sale of Goods and the Role of UNCITRAL. *Uniform Law Review* vol. 13, iss. 1-2 (2008): p. 127.

Esplugues Mota, C. El nuevo entorno de la contratación internacional: la Convención de Viena de 1980 sobre la compraventa internacional de mercaderías. In *Derecho de los contratos internacionales en Latinoamérica, Portugal y España.* Edited by C. Esplugues Mota, D. Hargain, and G. Palao Moreno. (Madrid [Spain]: Edisofer, 2008). p. 1.

The CISG and its Impact on National Legal Systems. Edited by F. Ferrari, (Munich [Germany]: Sellier, 2008). 489 p.

Drafting Contracts Under the CISG Edited by H. M. Flechtner, R. A. Brand, and M. S. Walter. (New York, New York [United States]: Oxford University Press, 2008). 597 p.

Flechtner, H. M. Funky Mussels, a Stolen Car, and Decrepit used Shoes: Non-Conforming Goods and Notice Thereof Under the United Nations Sales Convention. *Boston University International Law Journal* vol. 26, iss. 1 (2008): p. 1.

Hancock, C. Multimodal Transport and the New UN Convention on the Carriage of Goods. *The Journal of International Maritime Law* vol. 14, iss. 6 (2008): p. 484.

Herings, P. J. Harmonization of Private Law on a Global Level. *International Review of Law and Economics* vol. 28, iss. 4 (2008): p. 256.

Koehler, M. F., and Y. Guo. The Acceptance of the Unified Sales Law (CISG) in Different Legal Systems: An International Comparison of Three Surveys on the Exclusion of the CISG's Application Conducted in the United States, Germany and China. *Pace International Law Review* vol. 20, iss. 1 (2008): p. 45.

Lookofsky, J. *Understanding the CISG: A Compact Guide to the 1980 United Nations Convention on Contracts for the International Sale of Goods*. (Alphen aan den Rijn [The Netherlands]: Kluwer Law International, 2008). 243 p.

Martin, C. H. The Electronic Contracts Convention, the CISG, and the Sources of e-Commerce Law. *Tulane Journal of International and Comparative Law* vol. 16, iss. 2 (2008): p. 437.

Martínez Cañellas, A. Interpretación Del Derecho Mercantil Uniforme Internacional: El Artículo 7.1 De La Convención De Las Naciones Unidas Sobre Compraventa Internacional De Mercaderías. In *Contratos internacionales*. (Asunción: Centro de Estudios de Derecho, Economía y Política (CEDEP), 2008). p. 79.

Morrissey, J. F., and J. M. Graves. *International Sales Law and Arbitration: Problems, Cases and Commentary*. (Alphen aan den Rijn [The Netherlands]: Kluwer Law International, 2008). 500 p.

Nikaki, T. The Fundamental Duties of the Carrier Under the Rotterdam Rules. *The Journal of International Maritime Law* vol. 14, iss. 6 (2008): p. 512.

Pejovic, C. Stoppage in Transit and Right of Control: 'Conflict of Rules'? *Pace International Law Review* vol. 20, iss. 1 (2008): p. 129.

Perovic, J. La contravention essentielle au contrat comme fondement à la résolution des contrats dans les codifications de droit uniforme. *Revue de droit international et de droit comparé* vol. 85, iss. 2-3 (2008): p. 272.

Rares, S. The Onus of Proof in a Cargo Claim - Arts. III and IV of the Hague-Visby Rules and the UNCITRAL Draft Convention. *Australian Bar Review* vol. 31, iss. 2 (2008): p. 159.

Ruse-Kahn, H. G. A Pirate of the Caribbean? the Attractions of Suspending TRIPs Obligations. *Journal of International Economic Law* vol. 11, iss. 2 (2008): p. 313.

Reiley, E. H. *International Sales Contracts: The UN Convention and Related Transnational Law*. (Durham, North Carolina [United States]: Carolina Academic Press, 2008). 463 p.

Saidov, D. *The Law of Damages in International Sales: The CISG and Other International Instruments*. (Oxford [United Kingdom]: Hart, 2008). 294 p.

Sandoval López, R. Análisis del Convenio de CNUDMI/Uncitral sobre transporte total o parcialmente marítimo de mercanciás. *Analísis retrospectivo de los 30 años de la ley de navegación y los 20 años del Libro III del código de comercio chileno: Seminario de derecho marítimo: Recopilación de ponencias y artículos. Viña del Mar [Chile],* Edited by R. Abuauad Dagach *et al*. (Santiago, Chile: Librotecnia, 2008). p. 211.

Schwenzer, I. *Kommentar zum einheitlichen UN-Kaufrecht: das Übereinkommen der Vereinten Nationen über Verträge über den internationalen Warenkauf: CISG*. (Munich [Germany]: Beck, 2008). 1205 p.

Singh, L., and B. Leisinger. A Law for International Sale of Goods: A Reply to Michael Bridge. *Pace International Law Review* vol. 20, iss. 1 (2008): p. 161.

Sturley, M. F. Transport Law for the Twenty-First Century: An Introduction to the Preparation, Philosophy, and Potential Impact of the Rotterdam Rules. *The Journal of International Maritime Law* vol. 14, iss. 6 (2008): p. 461.

Thomas, R. An Appraisal of the Liability Regime Established Under the New UN Convention. *The Journal of International Maritime Law* vol. 14, iss. 6 (2008): p. 496.

Williams, R. Transport Documentation Under the New Convention. *The Journal of International Maritime Law* vol. 14, iss. 6 (2008): p. 566.

12. International criminal law

Abtahi, H., and P. Webb. *The Genocide Convention: The Travaux Preparatoires.* (Leiden [The Netherlands]: Martinus Nijhoff Publishers, 2009). 1252 p.

Bassiouni, C. M. *International Criminal Law.* 3rd ed. (Leiden [The Netherlands]: Nijhoff, 2008). 2630 p.

Cayley, A. T. The Prosecutor's Strategy in Seeking the Arrest of Sudanese President Al Bashir on Charges of Genocide. *Journal of International Criminal Justice* vol. 6, iss. 5 (2008): p. 829.

Chryssikos, D. Commentary on the United Nations Draft Model Law on Mutual Assistance in Criminal Matters. In *International Criminal Law.* Edited by C. M. Bassiouni. 3rd ed. (Leiden [The Netherlands]: Nijhoff, 2008). p. 403.

Chung, C. H. The Punishment and Prevention of Genocide: The International Criminal Court as a Benchmark of Progress and Need. *Case Western Reserve Journal of International Law* vol. 40, iss. 1-2 (2008): p. 227.

Ciampi, A. The Proceedings Against President Al Bashir and the Prospects of their Suspension Under Article 16 ICC Statute. *Journal of International Criminal Justice* vol. 6, iss. 5 (2008): p. 885.

Clapham, A. Extending International Criminal Law Beyond the Individual to Corporations and Armed Opposition Groups. *Journal of International Criminal Justice* vol. 6, iss. 5 (2008): p. 899.

Dawson, G., and R. Boynton. Reconciling Complicity in Genocide and Aiding and Abetting Genocide in the Jurisprudence of the United Nations Ad Hoc Tribunals. *Harvard Human Rights Journal* vol. 21, iss. 2 (2008): p. 241.

Degan, V. Responsibility of States and Individuals for Genocide and Other International Crimes. In *International Law between Universalism and Fragmentation: Festschrift in Honour of Gerhard Hafner.* Edited by I. Buffard, *et al.* (Leiden [The Netherlands]: Martinus Nijhoff, 2008). p. 511.

Frulli, M. Advancing International Criminal Law: The Special Court for Sierra Leone Recognizes Forced Marriage as a 'New' Crime Against Humanity. *Journal of International Criminal Justice* vol. 6, iss. 5 (2008): p. 1033.

Galbraith, J. 'New Facts' in ICTY and ICTR Review Proceedings. *Leiden Journal of International Law* vol. 21, iss. 1 (2008): p. 131.

Cooper, J. *Raphael Lemkin and the Struggle for the Genocide Convention.* (London [United Kingdom]: Palgrave MacMillan, 2008). 338 p.

Genocide. Edited by A. Jones. (Los Angeles, California [United States]: Sage, 2008). 1664 p.

Gosnell, C. The Request for an Arrest Warrant in Al Bashir: Idealistic Posturing Or Calculated Plan? *Journal of International Criminal Justice* vol. 6, iss. 5 (2008): p. 841.

Guilfoyle, D. Piracy Off Somalia: UN Security Council Resolution 1816 and IMO Regional Counter-Piracy Efforts. *International and Comparative Law Quarterly* vol. 57, iss. 3 (2008): p. 690.

Halley, J. Rape in Berlin: Reconsidering the Criminalisation of Rape in the International Law of Armed Conflict. *Melbourne Journal of International Law* vol. 9, iss. 1 (2008): p. 78.

—-. Implementing a Policy of Positive Complementarity in the Rome System of Justice. *Criminal Law Forum* vol. 19, iss. 1 (2008): p. 59.

Jessberger, F., and J. Geneuss. On the Application of a Theory of Indirect Perpetration in Al Bashir: German Doctrine at the Hague? *Journal of International Criminal Justice* vol. 6, iss. 5 (2008): p. 853.

Joseph, J. H. Gender and International Law: How the International Criminal Court can Bring Justice to Victims of Sexual Violence. *Texas Journal of Women and the Law* vol. 18, iss. 1 (2008): p. 61.

Kleffner, J. K. *Complementarity in the Rome Statute and National Criminal Jurisdictions.* (Oxford ; New York: Oxford University Press, 2008). 385 p.

Kuper, L. Sovereign Territorial State: The Right to Genocide. In *Genocide: Vol. 4: Prevention, Intervention, and Accountability.* Edited by A. Jones. (Los Angeles, California [United States]: Sage, 2008). p. 17.

Markovic, M. Vessels of Reproduction: Forced Pregnancy and the ICC. *Journal of International Law* vol. 16, iss. 2 (2008): p. 439.

Morrison, H. International Crimes and Trial. *International Criminal Law Review* vol. 8, iss. 3 (2008): p. 391.

Ondo, T. La protection de l'accusé devant les juridictions pénales internationales. *Revue trimestrielle des droits de l'homme*, iss. 73 (2008): p. 87.

Pritchett, S. M. Entrenched Hegemony, Efficient Procedure, Or Selective Justice? an Inquiry into Charges for Gender-Based Violence at the International Criminal Court. *Transnational Law and Contemporary Problems* vol. 17, iss. 1 (2008): p. 265.

Robert, M. La responsabilité du supérieur hiérarchique basée sur la négligence en droit pénal international. *Cahiers de Droit* vol. 49, iss. 3 (2008): p. 413.

Ryngaert, C. Applying the Rome Statute's Complementarity Principle: Drawing Lessons from the Prosecution of Core Crimes by States Acting Under the Universality Principle. *Criminal Law Forum* vol. 19, iss. 1 (2008): p. 153.

Scharf, M. P., and M. C. Bassiouni and the 780 Commission: The Gateway to the Era of Accountability. In *The Theory and Practice of International Criminal Law: Essays in Honor of M. Cherif Bassiouni.* Edited by L. N. Sadat and M. P. Scharf. (Leiden [The Netherlands]: Nijhoff, 2008). p. 269.

—-. Tainted Provenance: When, if Ever, should Torture Evidence be Admissible? *Washington and Lee Law Review* vol. 65, iss. 1 (2008).

Schiff, B. N. *Building the International Criminal Court*. (Cambridge [United Kingdom]: Cambridge University Press, 2008). 304 p.

Sluiter, G. Obtaining Cooperation from Sudan--Where is the Law? *Journal of International Criminal Justice* vol. 6, iss. 5 (2008): p. 871.

Totten, S. *The Prevention and Intervention of Genocide*. (New Brunswick, N.J.[United States]: Transaction Publishers, 2008). 309 p.

Vlassis, D. Challenges in the Development of International Criminal Law: The Negotiations of the United Nations Convention Against Transnational Organized Crime and the United Nations Convention Against Corruption. In *International Criminal Law.* Edited by C. M. Bassiouni. 3rd ed. (Leiden [Netherlands]: Nijhoff, 2008). p. 907.

War Crimes in Internal Armed Conflicts. Edited by E. La Haye. (Cambridge [United Kingdom]: Cambridge Univeristy Press, 2008). 424 p.

Watt, D. Stepping Forward Or Stumbling Back? Command Responsibility for Failure to Act, Civilian Superiors and the International Criminal Court. *Dalhousie Journal of Legal Studies* vol. 17 (2008): p. 141.

Whitaker, B. Revised and Updated Report on the Question of the Prevention and Punishment of the Crime of Genocide. In *Genocide: Vol. 1: Genocide in Theory and Law.* Edited by A. Jones. (Los Angeles, California [United States]: Sage, 2008). p. 75.

Wilmshurst, E. The Crime of Aggression: Custom, Treaty and Prospects for International Prosecution. In *International Law between Universalism and Fragmentation: Festschrift in Honour of Gerhard Hafner.* Edited by I. Buffard, *et al.* (Leiden [The Netherlands]: Martinus Nijhoff, 2008). p. 603.

Zahar, A., and G. Sluiter. *International Criminal Law: A Critical Introduction*. (Oxford [United Kingdom]: Oxford University Press, 2008). 530 p.

13. International economic law

Lowenfeld, A. F. *International Economic Law*. 2nd ed. (Oxford [United Kingdom]: Oxford University Press, 2008). 956 p.

Petersmann, E. U. Multilevel Judicial Governance as Guardian of the Constitutional Unity of International Economic Law. *Loyola of Los Angeles Law Review* vol. 30, iss. 3 (2008): p. 367.

14. International terrorism

Asada, M. Security Council Resolution 1540 to Combat WMD Terrorism: Effectiveness and Legitimacy in International Legislation. *Journal of Conflict and Security Law* vol. 13, iss. 3 (2008): p. 303.

Boulden, J. The Security Council and Terrorism. In *The United Nations Security Council and War: The Evolution of Thought and Practice since 1945.* Edited by V. Lowe. (Oxford [United Kingdom]: Oxford University Press, 2008). p. 608.

Couzigou, I. La lutte du Conseil de sécurité contre le terrorisme international et les droits de l'homme. *Revue générale de droit international public* vol. 112, iss. 1 (2008): p. 49.

Dhanapala, J. The United Nations' Response to 9/11. In *Terrorism and Human Rights*. Edited by M. Ranstorp and P. Wilkinson. (Abingdon [United Kingdom]: Routledge, 2008). p. 9.

Ginkel, B. van. Combating International Terrorism: New Powers for the Security Council? In *Changing Perceptions of Sovereignty and Human Rights: Essays in Honour of Cees Flinterman*. Edited by I. Boerefijn and J. Goldschmidt. (Antwerp [Netherlands]: Intersentia, 2008). p. 497.

Hinojosa Martínez, L. M. *La financiación del terrorismo y las Naciones Unidas*. (Madrid [Spain]: Tecnos, 2008). 239 p.

—-. The Legislative Role of the Security Council in its Fight Against Terrorism: Legal, Political and Practical Limits. *International and Comparative Law Quarterly* vol. 57, iss. 2 (2008): p. 333.

Johnstone, I. The UN Security Council, Counterterrorism and Human Rights. In *Counterterrorism: Democracy's Challenge*. Edited by A. Bianchi and A. Keller. (Oxford [United Kingdom]: Hart, 2008). p. 335.

Laurenti, J. The United Nations and Terrorism. In *Democratic Responses to Terrorism*. Edited by L. Weinberg. (New York, New York [United States]: Routledge, 2008). p. 69.

Mouangué Kobila, J. Le processus d'intervention du Conseil de sécurité dans la lutte contre le terrorisme international. In *Terrorisme et droit international / Académie de Droit International de la Haye = Terrorism and International Law / Hague Academy of International Law*. Edited by M. J. Glennon and S. Sur. (Leiden [The Netherlands]: Nijhoff, 2008). p. 423.

Schmid, A. P. Terrorism and Human Rights: A Perspective from the United Nations. In *Terrorism and Human Rights*. Edited by M. Ranstorp and P. Wilkinson. (Abingdon [United Kingdom]: Routledge, 2008). p. 16.

Tine, A. La stratégie antiterroriste du Conseil: Esquisse d'un bilan provisoire de la mise en œuvre des résolutions 1373 et 1540. In *Terrorisme et droit international / Académie de Droit International de la Haye = Terrorism and International Law / Hague Academy of International Law*. Edited by M. J. Glennon and S. Sur. (Leiden [The Netherlands]: Nijhoff, 2008). p. 467.

15. International trade law

Brusick, P. La CNUCED: Le Code Des Nations Unies sur la Concurrence. In *Mondialisation et droit de la concurrence: les réactions normatives des états face à la mondialisation des pratiques anticoncurrentielles et des opérations de concentration*. Edited by W. Abdelqawad. (Paris [France]: LexisNexis Litec, 2008). p. 167.

Buthe, T. The Globalization of Health and Safety Standards: Delegation of Regulatory Authority in the SPS Agreement of the 1994 Agreement Establishing the World Trade Organization. *Law and Contemporary Problems* vol. 71, iss. 2 (2008): p. 219.

Das, K. Coping with SPS Challenges in India: WTO and Beyond. *Journal of International Economic Law* vol. 11, iss. 4 (2008): p. 971.

Fukunaga, Y. Enforcing TRIPs: Challenges of Adjudicating Minimum Standards Agreements. *Berkeley Technology Law Journal* vol. 23, iss. 2 (2008): p. 867.

Harrison, J. Legal and Political Oversight of WTO Waivers. *Journal of International Economic Law* vol. 11, iss. 2 (2008): p. 411.

Kaufmann, C., and M. Gorsz. Poverty, Hunger and International Trade: What's Law Got to do with it? Current Mechanism and the Doha Development Agenda. *German Yearbook of International Law* vol. 51 (2008): p. 75.

Sadah, M. A., and S. Norton. The Application of Uncitral Model Law Principles in the Middle East Region. *Arab Law Quarterly* vol. 22, iss. 3 (2008): p. 219.

Wara, M. Measuring the Clean Development Mechanism's Performance and Potential. *U.C.L.A. Law Review* vol. 55, iss. 6 (2008): p. 1759.

16. International tribunals

Almqvist, J. Complementarity and Human Rights: A Litmus Test for the International Criminal Court. *Loyola of Los Angeles International and Comparative Law Review* vol. 30, iss. 4 (2008): p. 335.

Amerashinghe, C. F. *Jurisdiction of Specific International Tribunals*. (Leiden [The Netherlands]: Nijhoff, 2008). 574 p.

Badar, M. E. The Mental Element in the Rome Statute of the International Criminal Court: A Commentary from a Comparative Criminal Law Perspective. *Criminal Law Forum* vol. 19, iss. 3-4 (2008): p. 473.

Bender, P. The Tomimaru and Hoshinmaru Cases before ITLOS. *International Journal of Marine and Coastal Law* vol. 23, iss. 2 (2008): p. 349.

Boyle, A. Between Process and Substance: Sustainable Development in the Jurisprudence of International Courts and Tribunals. In *Sustainable Development in International and National Law: What did the Brundtland Report do to Legal Thinking and Legal Development, and Where can we Go from here?* Edited by H. C. Bugge and C. Voigt. (Groningen [The Netherlands]: Europa Law, 2008). p. 201.

Brown, C. The Cross-Fertilization of Principles Relating to Procedure and Remedies in the Jurisprudence of International Courts and Tribunals. *Loyola of Los Angeles Law Review* vol. 30, iss. 3 (2008): p. 219.

Brubaker, J. R. The Judge Who Knew Too Much: Issue Conflicts in International Adjudication. *Berkeley Journal of International Law* vol. 26, iss. 1 (2008): p. 111.

Burchard, C. Torture in the Jurisprudence of the Ad Hoc Tribunals: A Critical Assessment. *Journal of International Criminal Justice* vol. 6, iss. 2 (2008): p. 159.

Burke-White, W. The Domestic Influence of International Criminal Tribunals: The International Criminal Tribunal for the Former Yugoslavia and the Creation of the State Court of Bosnia and Herzegovina. *Columbia Journal of Transnational Law* vol. 46, iss. 2 (2008): p. 279.

—-. Implementing a Policy of Positive Complementarity in the Rome System of Justice. *Criminal Law Forum* vol. 19, iss. 1 (2008): p. 59.

Burke-White, W. W. Bargaining for Arrests at the International Criminal Court: A Response to Roper and Barria. *Leiden Journal of International Law* vol. 21, iss. 02 (2008): p. 477.

Clark, R. S. Drafting a General Part to a Penal Code: Some Thoughts Inspired by the Negotiations on the Rome Statute of the International Criminal Court and by the Court's First Substantive Law Discussion in the Lubanga Dyilo Confirmation Proceedings. *Criminal Law Forum* vol. 19, iss. 3-4 (2008): p. 519.

Cline, C. T. Perspectives of a Non-Party to the International Criminal Court Treaty. *Transnational Law and Contemporary Problems* vol. 17, iss. 1 (2008): p. 107.

Cogan, J. K. Competition and Control in International Adjudication. *Virginia Journal of International Law* vol. 48, iss. 2 (2008): p. 411.

De Hemptinne, J. Plaidoyer en faveur de l'institution de chambres d'instruction à la Cour pénale internationale. *Revue de droit penal et de criminologie*, iss. 6 (2008): p. 608.

De Roca, I., M. Weinberg, and C. M. Rassi. Sentencing and Incarceration in the Ad Hoc Tribunals. *Stanford Journal of International Law* vol. 44, iss. 1 (2008): p. 1.

Dieckmann, J., and C. Kerll. UN Ad Hoc Tribunals Under Time Pressure: Completion Strategy and Referral Practice of the ICTY and ICTR from the Perspective of the Defence. *International Criminal Law Review* vol. 8, iss. 1-2 (2008): p. 87.

El Zeidy, M. M. From Primacy to Complementarity and Backwards: (Re)-Visiting Rule 11 Bis of the Ad Hoc Tribunals. *International and Comparative Law Quarterly* vol. 57, iss. 2 (2008): p. 403.

—-. The Gravity Threshold Under the Statute of the International Criminal Court. *Criminal Law Forum* vol. 19, iss. 1 (2008): p. 35.

Franklin, D. J. Failed Rape Prosecutions at the International Criminal Tribunal for Rwanda. *Georgetown Journal of Gender and the Law* vol. 9, iss. 1 (2008): p. 181.

Galbraith, J. 'New Facts' in ICTY and ICTR Review Proceedings. *Leiden Journal of International Law* vol. 21, iss. 1 (2008): p. 131.

Goldstone, R. J., and R. J. Hamilton. Bosnia v. Serbia: Lessons from the Encounter of the International Court of Justice with the International Criminal Tribunal for the Former Yugoslavia. *Leiden Journal of International Law* vol. 21, iss. 1 (2008): p. 95.

Goldstone, D. E. Embracing Impasse: Admissibility, Prosecutorial Discretion, and the Lessons of Uganda for the International Criminal Court. *Emory International Law Review* vol. 22, iss. 2. (2008): p.761.

Gustafson, K., and N. Janisiewicz. Current Developments at the Ad Hoc International Criminal Tribunals. *Journal of International Criminal Justice* vol. 6, iss. 5 (2008): p. 1091.

Guzman, A. T. International Tribunals: A Rational Choice Analysis. *University of Pennsylvania Law Review* vol. 157, iss. 1 (2008): p. 171.

Johnson, L. D. UN-Based International Criminal Tribunals: How they Mix and Match. *Denver Journal of International Law and Policy* vol. 36, iss. 3-4 (2008): p. 275.

Kaul, H. The International Criminal Court - International Humanitarian Law at Work. In *International Law between Universalism and Fragmentation : Festschrift in Honour of Gerhard Hafner.* Edited by I. Buffard, *et al.* (Leiden [The Netherlands]: Martinus Nijhoff, 2008). p. 553.

Kyriakakis, J. Corporations and the International Criminal Court: The Complementarity Objection Stripped Bare. *Criminal Law Forum* vol. 19, iss. 1 (2008): p. 115.

Laucci, C. *The Annotated Digest of the International Criminal Court, 2004-2006.* (Leiden [The Netherlands]: Nijhoff, 2008). 676 p.

Lavranos, N. Regulating Competing Jurisdictions among International Courts and Tribunals. *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht* vol. 68, iss. 3 (2008): p. 575.

—-. *Code annoté de la Cour Penale Internationale, 2004-2006.* (Leiden [The Netherlands]: Nijhoff, 2008). 824 p.

Lavers, J. T. (Pre)Determining the Crime of Aggression: Has the Time Come to Allow the International Criminal Court its Freedom? *Albany Law Review* vol. 71, iss. 1 (2008): p. 299.

Manirakiza, P. Les défis de la défense devant le Tribunal pénal international pour le Rwanda. *Revue Generale de Droit* vol. 38, iss. 1 (2008): p. 47.

McCormack, T. The Contribution of the International Criminal Court to Increasing Respect for International Humanitarian Law. *University of Tasmania Law Review* vol. 27, iss. 1 (2008): p. 22.

Meernik, J., and R. Aloisi. Is Justice Delayed at the International Criminal Tribunals? *Judicature* vol. 91, iss. 6 (2008): p. 276.

Mégret, F. A Special Tribunal for Lebanon: The UN Security Council and the Emancipation of International Criminal Justice. *Leiden Journal of International Law* vol. 21, iss. 2 (2008): p. 485.

Moreno-Ocampo, L. The International Criminal Court: Seeking Global Justice. *Case Western Reserve Journal of International Law* vol. 40, iss. 1-2 (2008): p. 215.

Müller, C. A. The Law of Interim Release in the Jurisprudence of the International Criminal Tribunals. *International Criminal Law Review* vol. 8, iss. 3 (2008): p. 589.

Müller, C. A., and T. Smith. The Work of the International Criminal Court in 2008. *German Yearbook of International Law* vol. 51 (2008): p. 593.

Müllerson, R. Aspects of Legitimacy of Decisions of International Courts and Tribunals: Comments. In *Legitimacy in International Law.* Edited by R. Wolfrum and V. Röben. (Berlin [Germany]: Springer, 2008). p. 189.

Muñoz, E. F., B. Krings, and K. Molle. The Work of the International Criminal Tribunal for the Former Yugoslavia in the Year 2008. *German Yearbook of International Law* vol. 51 (2008): p. 641.

Ndiaye, T. M. Proceedings on the Merits before the International Tribunal for the Law of the Sea. *Indian Journal of International Law* vol. 48, iss. 2 (2008): p. 167.

Nevill, P. Awards of Interest by International Courts and Tribunals. *The British Year Book of International Law* vol. 78 (2008): p. 255.

Ntanda Nsereko, D. D. The Role of the International Criminal Tribunals in the Promotion of Peace and Justice: The Case of the International Criminal Court. *Criminal Law Forum* vol. 19, iss. 3-4 (2008): p. 373.

O'Callaghan, D. Is the International Criminal Court the Way Ahead? *International Criminal Law Review* vol. 8, iss. 3 (2008): p. 533.

Olásolo, H. *Unlawful Attacks in Combat Situations: From the ICTY's Case Law to the Rome Statute.* (Leiden [The Netherlands]: Martinus Nijhoff Publishers, 2008). 288 p.

Oosterveld, V. The Special Court for Sierra Leone, Child Soldiers and Forced Marriage: Providing Clarity Or Confusion? *Canadian Yearbook of International Law* vol. 45 (2008): p. 131.

Patnaik, D. S. Special Tribunal for Lebanon: Some Preliminary Reflections. *Indian Journal of International Law* vol. 48, iss. 2 (2008): p. 242.

Pentelovitch, N. H. Seeing Justice done: The Importance of Prioritizing Outreach Efforts at International Criminal Tribunals. *Georgetown Journal of International Law* vol. 39, iss. 3 (2008): p. 445.

Pichon, J. The Principle of Complementarity in the Cases of the Sudanese Nationals Ahmad Harun and Ali Kushayb before the International Criminal Court. *International Criminal Law Review* vol. 8, iss. 1-2 (2008): p. 185.

Quénivet, N. The Role of the International Criminal Court in the Prosecution of Peacekeepers for Sexual Offenses. In *Law Enforcement within the Framework of Peace Support Operations.* Edited by R. Arnold. (Leiden [The Netherlands]: Nijhoff, 2008). p. 399.

Raimondo, F. *General Principles of Law in the Decisions of International Criminal Courts and Tribunals.* (Leiden [The Netherlands]: Nijhoff, 2008). 212 p.

Rapp, S. J. The Compact Model in International Criminal Justice: The Special Court for Sierra Leone. *Drake Law Review* vol. 57, iss. 1 (2008): p. 11.

Rastan, R. Testing Co-Operation: The International Criminal Court and National Authorities. *Leiden Journal of International Law* vol. 21, iss. 2 (2008): p. 431.

—-. What is a 'Case' for the Purpose of the Rome Statute? *Criminal Law Forum* vol. 19, iss. 3-4 (2008): p. 435.

Robinson, P., and G. Ghahraman. Can Rwandan President Kagame be Held Responsible at the ICTR for the Killing of President Habyarimana? *Journal of International Criminal Justice* vol. 6, iss. 5 (2008): p. 981.

Rodosavljevic, D. Mala Captus Bene Detentus and the Right to Challenge the Legality of Arrests Under the ICC Statute. *Liverpool Law Review: A Journal of Contemporary Legal and Social Policy Issues* vol. 29, iss. 3 (2008): p. 269.

Roper, S. D., and L. A. Barria. State Co-Operation and International Criminal Court Bargaining Influence in the Arrest and the Surrender of Suspects. *Leiden Journal of International Law* vol. 21, iss. 02 (2008): p. 457.

SaCouto, S., and K. Cleary. The Gravity Threshold of the International Criminal Court. *American University International Law Review* vol. 23, iss. 5 (2008): p. 807.

—-. Victims' Participation in the Investigations of the International Criminal Court. *Transnational Law and Contemporary Problems* vol. 17, iss. 1 (2008): p. 73.

Sandholtz, W. Creating Authority by the Council: The International Criminal Tribunals. In *The UN Security Council and the Politics of International Authority.* Edited by B. Cronin and I. Hurd. (London [United Kingdom]: Routledge, 2008). p. 131.

Sayapin, S. The Definition of the Crime of Aggression for the Purpose of the International Criminal Court: Problems and Perspectives. *Journal of Conflict and Security Law* vol. 13, iss. 3 (2008): p. 333.

Shany, Y., and S. Horovitz. Judicial Independence in the Hague and Freetown: A Tale of Two Cities. *Leiden Journal of International Law* vol. 21, iss. 1 (2008): p. 113.

Skilbeck, R. Defending the Khmer Rouge. *International Criminal Law Review* vol. 8, iss. 3 (2008): p. 423.

Smith, M. The Relevance of the Work of the International Criminal Court to Refugee Status Determinations. *International Journal of Refugee Law* vol. 20, iss. 1 (2008): p. 166.

Stahn, C., and G. Sluiter. *The Emerging Practice of the International Criminal Court*. (Leiden [the Netherlands] ; Boston: Martinus Nijhoff Publishers, 2008). 770 p.

Stahn, C. Complementarity: A Tale of Two Notions. *Criminal Law Forum* vol. 19, iss. 1 (2008): p. 87.

Stigen, J. *The Relationship between the International Criminal Court and National Jurisdictions: The Principle of Complementarity.* (Leiden [the Netherlands]: Martinus Nijhoff Publishers, 2008). 533 p.

—-. The Solange-Method as a Tool for Regulating Competing Jurisdictions among International Courts and Tribunals. *Loyola of Los Angeles Law Review* vol. 30, iss. 3 (2008): p. 275.

Tofan, C. *The Establishment of the Hariri Tribunal.* (Oisterwijk [The Netherlands]: Wolf Legal Publishers, 2008). 422 p.

Totten, C. D., and N. Tyler. Arguing for an Integrated Approach to Resolving the Crisis in Darfur: The Challenges of Complementarity, Enforcement, and Related Issues in the International Criminal Court. *Journal of Criminal Law and Criminology* vol. 98, iss. 3 (2008): p. 1069.

Treves, T. Aspects of Legitimacy of Decisions of International Courts and Tribunals. In *Legitimacy in International Law.* Edited by R. Wolfrum and V. Röben. (Berlin [Germany]: Springer, 2008). p. 169.

Triffterer, O. 'Irrelevance of Official Capacity' - Article 27 Rome Statute Undermined by Obligations Under International Law Or by Agreements, Article 98? In *International Law between Universalism and Fragmentation: Festschrift in Honour of Gerhard Hafner.* Edited by I. Buffard, *et al.* (Leiden [The Netherlands]: Martinus Nijhoff, 2008).

Triffterer, O., and K. Ambos. *Commentary on the Rome Statute of the International Criminal Court: Observers' Notes, Article by Article*. 2nd ed. (München, Germany: Beck, 2008). 1954 p.

Wilt, H. van der. Equal Standards? on the Dialectics between National Jurisdictions and the International Criminal Court. *International Criminal Law Review* vol. 8, iss. 1-2 (2008): p. 229.

Wouters, J. The International Criminal Court's Office of the Prosecutor: Navigating between Independence and Accountability? *I-CON: International Journal of Constitutional Law* vol. 8, iss. 1-2 (2008): p. 273.

You, K. Advisory Opinions of the International Tribunal for the Law of the Sea: Article 138 of the Rules of the Tribunal, Revisited. *Ocean Development and International Law* vol. 39, iss. 4 (2008): p. 360.

Zahar, A. Legal Aid, Self-Representation, and the Crisis at the Hague Tribunal. *Criminal Law Forum* vol. 19, iss. 2 (2008): p. 241.

Zaring, D. Rulemaking and Adjudication in International Law. *Columbia Journal of Transnational Law* vol. 46, iss. 3 (2008): p. 563.

17. International waterways

Rieu-Clarke, A. The Role and Relevance of the UN Convention on the Law of the Non-Navigational Uses of International Watercourses to the EU and its Members States. *The British Year Book of International Law* vol. 78 (2007): p. 389.

MacCaffrey, S. C. The 1997 U.N. Watercourses Convention: Retrospect and Prospect. *Pacific McGeorge Global Business and Development Law Journal* vol. 21, iss. 2 (2008): p. 165.

Wouters, P. *Water Law and Transboundary Watercourses*. (London [United Kingdom]: Internatinoal Water Association, (2008). 450 p.

18. Intervention and humanitarian intervention

Barbour, B., and B. Gorlick. Embracing the 'Responsibility to Protect': A Repertoire of Measures Including Asylum for Potential Victims. *International Journal of Refugee Law* vol. 20, iss. 4 (2008): p. 533.

Bennis, P. The Lebanon War in the UN, the UN in the Lebanon War. In *The War on Lebanon: A Reader.* Edited by N. Hovsepian. (Northampton, Massachusetts [United States]: Olive Branch Press, 2008). p. 225.

Focarelli, C. The Responsibility to Protect Doctrine and Humanitarian Intervention: Too Many Ambiguities for a Working Doctrine. *Journal of Conflict and Security Law* vol. 13, iss. 2 (2008): p. 191.

Gueldich, H., and I. Belahouene. La violation des droits de l'homme justifie-t-elle le recours à la force? In *Les droits de l'homme: une nouvelle cohérence pour le droit international? Rencontre dédiée à la mémoire de Dali Jazi.* Edited by R. B. Achour and S. Laghmani. (Paris [France]: Pedone, 2008). p. 309.

Hilpold, P. Das Kosovo-Problem: ein Testfall für das Völkerrecht. *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht* vol. 68, iss. 3 (2008): p. 779.

Kridis, N. Le renouveau des interventions militaires. In *Droits et culture: mélanges en l'honneur du Doyen Yadh Ben Achour.* Edited by Y. B. Achour, K. Meziou, and S. Laghmani. (Tunis [Tunisia]: Centre de Publication Universitaire, 2008). p. 1385.

MacClean, E. The Responsibility to Protect: The Role of International Human Rights Law. *Journal of Conflict and Security Law* vol. 13, iss. 1 (2008): p. 123.

Milano, E. Il trasferimento di funzioni da UNMIK a EULEX in Kosovo. *Rivista di diritto internazionale* vol. 91, iss. 4 (2008): p. 967.

Oh Si Jin. The Legality of Humanitarian Intervention: Focusing on the Responsibility to Protect. *Korea University Law Review*, iss. 3 (2008): p. 134.

Prandler, A. The Concept of 'Responsibility to Protect' as an Emerging Norm Versus 'Humanitarian Intervention'. In *International Law between Universalism and Fragmentation: Festschrift in Honour of Gerhard Hafner.* Edited by I. Buffard, *et al.* (Leiden [The Netherlands]: Nijhoff, 2008). p. 711.

Rinaldi, F. La questione kosovara dopo il fallimento della mediazione internazionale: come inizio ed epilogo di una storia possono coincidere. *Pace diritti umani: rivista quadrimestrale del Centro Interdipartimentale di Ricerca e Servizi sui Diritti della Persona e dei Popoli dell'Università di Padova* vol. 5, iss. 2 (2008): p. 81.

Rusu, S., and S. Schmeidl. Early Warning and Early Action in the UN System: UNDP and OCHA. In *Institutions for the Management of Ethnopolitical Conflict in Central and Eastern Europe*. Edited by European Centre for Minority Issues. (Strasbourg [France]: Council of Europe, 2008). p. 149.

Shepherd, L. J. 'to Save Succeeding Generations from the Scourge of War': The US, UN and the Violence of Security. *Review of International Studies* vol. 34, iss. 02 (2008): p. 293.

Weller, M. Interim-Governance for Kosovo: The Rambouillet Agreement and the Constitutional Framework Developed Under UN Administration. In *Settling Self-Determination Disputes: Complex Power-Sharing in Theory and Practice.* Edited by M. Weller and B. Metzger. (Leiden [The Netherlands]: Nijhoff, 2008). p. 243.

Welsh, J. M. The Security Council and Humanitarian Intervention. In *The United Nations Security Council and War: The Evolution of Thought and Practice since 1945.* Edited by V. Lowe. (Oxford [United Kingdom]: Oxford University Press, 2008). p. 535.

19. Jurisdiction

Ryngaert, C. *Jurisdiction in International Law.* (Oxford [United Kingdom]: Oxford University, 2008). 241 p.

20. Law of armed conflict

Del Prado, J. L. G. Private Military and Security Companies and the UN Working Group on the use of Mercenaries. *Journal of Conflict and Security Law* vol. 13, iss. 3 (2008): p. 429.

Engdahl, O., P. Wrange, and O. Bring. *Law at War: The Law as it was and the Law as it should be.* (Leiden [The Netherlands]: Martinus Nijhoff Publishers, 2008). 325 p.

Faite, A. Multinational Forces Acting Pursuant to a Mandate of the United Nations: Specific Issues on the Applicability of International Humanitarian Law. *International Peacekeeping* vol. 11 (2008): p. 143.

Fleck, D. The Law of Non-International Armed Conflicts. In *The Handbook of International Humanitarian Law.* Edited by D. Fleck. 2nd ed. (Oxford: Oxford University Press, 2008). p. 605.

Fox, G. H. *Humanitarian Occupation*. (Cambridge [United Kingdom]: Cambridge University, 2008). 320 p.

Green, L. C. *The Contemporary Law of Armed Conflict*. 3rd ed. (New York, New York [United States]: Juris, 2008). 434 p.

Hague Academy of International Law. Center for Studies and Research. *Les règles et les institutions du droit international humanitaire à l'épreuve des conflits armés récents.* (Leiden [The Netherlands]: Nijhoff, 2008). 227 p.

Halley, J. Rape in Berlin: Reconsidering the Criminalisation of Rape in the International Law of Armed Conflict. *Melbourne Journal of International Law* vol. 9, iss. 1 (2008): p. 78.

Olásolo, H. *Unlawful Attacks in Combat Situations: From the ICTY's Case Law to the Rome Statute.* (Leiden [The Netherlands]: Martinus Nijhoff Publishers, 2008). 288 p.

Tigroudja, H. Les règles du droit international général applicables à la protection du patrimoine culturel en temps de conflit armé. In *Le patrimoine culturel de l'humanité / Académie de Droit International de la Haye = The cultural heritage of mankind / Hague Academy of International Law.* Edited by J. A. R. Nafziger and T. Scovazzi. (Leiden [The Netherlands]: Nijhoff, 2008). p. 771.

Wolfrum, R., and D. Fleck. Enforcement of International Humanitarian Law. In *The Handbook of International Humanitarian Law.* Edited by D. Fleck. 2nd ed. (Oxford: Oxford University Press, 2008). p. 675.

21. Law of the sea

Anderson, D. *Modern Law of the Sea: Selected Essays*. (Leiden [The Netherlands]: Nijhoff, 2008). 623 p.

Becker, M. A. International Law of the Sea. *The International Lawyer* vol. 42, iss. 2 (2008): p. 797.

Beer Gabel, J. Privilège du pavillon et protection de l'environnement marin dans la Convention sur le droit de la mer. *Le pavillon : actes écrits du colloque organisé les 2 et 3 mars 2007. Institut Océanographique de Paris, 2-3 March 2007.* Edited by Institut du Droit Économique de la Mer et Association internationale du Droit de la Mer. (Paris [France]: Pedone, 2008). p. 111.

Bender, P. The Tomimaru and Hoshinmaru Cases before ITLOS. *International Journal of Marine and Coastal Law* vol. 23, iss. 2 (2008): p. 349.

Bräuninger, T., and T. König. Making Rules for Governing Global Commons: The Case of Deep-Sea Mining. In *International Law. Volume 5*. Edited by B. A. Simmons. (London [United Kingdom]: SAGE, 2008). p. 141.

Chircop, A. The Maritime Zones of East African States in the Law of the Sea: Benefits Gained, Opportunities Missed. *African Journal of International and Comparative Law* vol. 16, iss. 2 (2008): p. 121.

Churchill, R. R. Conflicts between UN Security Council Resolutions and the UN Convention on the Law of the Sea: And their Possible Resolution. *Israel Yearbook on Human Rights* vol. 38 (2008): p. 185.

Churchill, R. Dispute Settlement Under the UN Convention on the Law of the Sea: Survey for 2007. *The International Journal of Marine and Coastal Law* vol. 23, iss. 4 (2008): p. 601.

Claypoole, C. Access to International Justice: A Review of the Trust Funds Available for Law of the Sea-Related Disputes. *The International Journal of Marine and Coastal Law* vol. 23, iss. 1 (2008): p. 77.

Clote, P. Implications of Global Warming on State Sovereignty and Arctic Resources Under the United Nations Convention on the Law of the Sea: How the Arctic is no Longer Communis Omnium Naturali Juri. *Richmond Journal of Global Law and Business* vol. 8, iss. 2. (2008): p.195.

Erickson, A. L. Out of Stock: Strengthening International Fishery Regulations to Achieve a Healthier Ocean. *North Carolina Journal of International Law and Commercial Regulation* vol. 34, iss. 1 (2008): p. 281.

Grellet, L. L'égalité de la directive 2005/35/CE au regard des conventions Montego Bay et Marpol. *Le droit maritime français* vol. 60, iss. 697 (2008): p. 892.

Heintschel von Heinegg, W. The Law of Armed Conflict at Sea. In *The Handbook of International Humanitarian Law.* Edited by D. Fleck. 2nd ed. (Oxford [United Kingdom]: Oxford University Press, 2008). p. 476.

Iudicello, S. International Fisheries Management. In *Ocean and Coastal Law and Policy.* Edited by D. C. Baur, T. Eichenberg, and M. Sutton. (Chicago, Illinois [United States]: American Bar Association, 2008). p. 303.

Kachel, M. J. *Particularly Sensitive Sea Areas: The IMO's Role in Protecting Vulnerable Marine Areas*. (Berlin [Germany]: Springer, 2008). 376 p.

Kaye, S. Lessons Learned from the Gulf of Maine Case: The Development of Maritime Boundary Delimitation Jurisprudence since UNCLOS III. *Ocean and Coastal Law Journal* vol. 14, iss. 1 (2008): p. 73.

Kvinikhidze, S. Contemporary Exclusive Fishery Zones Or Why some States Still Claim an EFZ. *International Journal of Marine and Coastal Law* vol. 23, iss. 2 (2008): p. 271.

Kwast, P. J. Maritime Law Enforcement and the use of Force: Reflections on the Categorisation of Forcible Action at Sea in the Light of the Guyana/Suriname Award. *Journal of Conflict and Security Law* vol. 13, iss. 1 (2008): p. 49.

Lugten, G. Meeting of States Parties to the UN Law of the Sea Convention: The Time Limit for Making Submissions to the Commission on the Limits of the Continental Shelf: The Current State of Affairs. *International Journal of Marine and Coastal Law* vol. 23, iss. 4 (2009): p. 769.

Macnab, R. Submarine Elevations and Ridges: Wild Cards in the Poker Game of UNCLOS Article 76. *Ocean Development and International Law* vol. 39, iss. 2 (2008): p. 223.

Ndiaye, T. M. Proceedings on the Merits before the International Tribunal for the Law of the Sea. *Indian Journal of International Law* vol. 48, iss. 2 (2008): p. 167.

Freedom of Seas, Passage Rights and the 1982 Law of the Sea Convention. Edited by M. H. Nordquist, T. T. B. Koh, and J. N. Moore. (Leiden [The Netherlands]: Martinus Nijhoff, 2009). 623 p.

Oude Elferink, A. G. Meeting of States Parties to the UN Law of the Sea Convention. *The International Journal of Marine and Coastal Law* vol. 23, iss. 4 (2008): p. 769.

Proelss, A., and T. Müller. The Legal Regime of the Arctic Ocean. *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht* vol. 68, iss. 3 (2008): p. 651.

Proelss, A. Marine Genetic Resources Under UNCLOS and the CBD. *German Yearbook of International Law* vol. 51 (2008): p. 417.

Prows, P. A Mouse can Roar: Small Island States, the United Nations, and the End of Free-for-all Fishing on the High Seas. *Colorado Journal of International Environmental Law and Policy* vol. 19, iss. 1 (2008): p. 1.

R. Bhanu Krishna Kiran. Liability for the Damage Resulting from the Carriage of Hazardous and Noxious Substances by Sea. *Indian journal of international law* vol. 48, iss. 3 (2008): p. 361.

Ramphal, S. *Triumph of UNCLOS: The Guyana-Suriname Maritime Arbitration: A Compilation and Commentary*. (London [United Kingdom]: Hansib, 2008). 357 p.

Rayfuse, R., and R. Warner. Securing a Sustainable Future for the Oceans Beyond National Jurisdiction: The Legal Basis for an Integrated Cross-Sectoral Regime for High Seas Governance for the 21st Century. *The International Journal of Marine and Coastal Law* vol. 23, iss. 3 (2008): p. 399.

Rothwell, D. R. Issues and Strategies for Outer Continental Shelf Claims. *International Journal of Marine and Coastal Law* vol. 23, iss. 2 (2008): p. 185.

Roughton, D. Rights (and Wrongs) of Capture: International Law and the Implications of the Guyana/Suriname Arbitration. *Journal of Energy and Natural Resources Law* vol. 26, iss. 3 (2008): p. 374.

Savadogo, L. Les Les navires battant pavillon d'une organisation internationale. *Annuaire français de droit international* vol. 53 (2007) (2008): p. 640.

Serdy, A. Is there a 400-Mile Rule in UNCLOS Article 76 (8)? *International and Comparative Law Quarterly* vol. 57, iss. 4 (2008): p. 941.

Suarez, S. V. *The Outer Limits of the Continental Shelf : Legal Aspects of their Establishment*. Edited by Max-Planck-Institut für Ausländisches Öffentliches Recht und Völkerrecht. (Berlin: Springer, 2008). 276 p.

Tanaka, Y. Reflections on Maritime Delimitation in the Nicaragua / Honduras Case. *Heidelberg Journal of International Law* vol. 68, iss. 4 (2008): p. 903.

Tanaka, Y. Reflections on the Conservation and Sustainable use of Genetic Resources in the Deep Seabed Beyond the Limits of National Jurisdiction. *Ocean Development and International Law* vol. 39, iss. 2 (2008): p. 129.

Treves, T. The International Tribunal for the Law of the Sea and Other Law of the Sea Jurisdictions (2007). *The Italian Yearbook of International Law* vol. 17 (2007) (2008): p. 175.

Van Dyke, J. M. The 1982 United Nations Convention on the Law of the Sea. In *Ocean and Coastal Law and Policy*. Edited by D. C. Baur, T. Eichenberg, and M. Sutton. (Chicago, Illinois [United States]: American Bar Association, 2008). p. 375.

Witt, J. *Obligations and Control of Flag States: Developments and Perspectives in International Law and EU Law*. (Berlin [Germany]: Lit Verlag, 2008). 346 p.

You, K. Advisory Opinions of the International Tribunal for the Law of the Sea: Article 138 of the Rules of the Tribunal, Revisited. *Ocean Development and International Law* vol. 39, iss. 4 (2008): p. 360.

Zhao, Y. The Relationships among the Three Multilateral Regimes Concerning the Underwater Cultural Heritage. In *Le patrimoine culturel de l'humanité / Académie de droit international de La Haye = the Cultural Heritage of Mankind / Hague Academy of International Law*. Edited by J. A. R. Nafziger and T. Scovazzi. (Leiden [The Netherlands]: Nijhoff, 2008). p. 601.

22. Law of treaties

Belz, M. Provisional Application of the Energy Charter Treaty: Kardassopoulos v. Georgia and Improving Provisional Application in Multilateral Treaties. *Emory International Law Review* vol. 22, iss. 2 (2008): p. 727.

Binder, C. The Pacta Sunt Servanda Rule in the Vienna Convention on the Law of Treaties: A Pillar and its Safeguards. In *International Law between Universalism and Fragmentation: Festschrift in Honour of Gerhard Hafner.* Edited by I. Buffard, *et al.* (Leiden [The Netherlands]: Martinus Nijhoff, 2008). p. 317.

Burke, N. A Change in Perspective: Looking at Occupation through the Lens of the Law of Treaties. *New York University Journal of International Law and Politics* vol. 41, iss. 1 (2008): p. 103.

Chinkin, C. Jus Cogens, Article 103 of the UN Charter and Other Hierarchical Techniques of Conflict Solution. *The Finnish Yearbook of International Law* vol. 17 (2006) (2008): p. 63.

Helfer, L. R. Monitoring Compliance with Unratified Treaties: The ILO Experience. *Law and Contemporary Problems* vol. 71, iss. 1 (2008): p. 193.

Lindroos, A. The Institutional Veil in Public International Law. International Organisations and the Law of Treaties. *International Organizations Law Review* vol. 5, iss. 2 (2008): p. 399.

Oellers-Frahm, K. The Evolving Role of Treaties in International Law. In *Progress in International Law.* Edited by R. A. Miller and R. M. Bratspies. (Leiden [The Netherlands]: Nijhoff, 2008). p. 173.

23. Membership and representation

Eldar, O. Vote-Trading in International Institutions. *European Journal of International Law* vol. 19, iss. 1 (2008): p. 3.

Hamonic, A. La représentation de l'Union européenne au sein de la commission de consolidation de la paix des Nations Unies: entre anticipation et continuité. *Cahiers de droit europeen* vol. 44, iss. 5 (2008): p. 591.

Koremenos, B. When, what, and Why do States Choose to Delegate? *Law and contemporary problems* vol. 71, iss. 2 (2008): p. 151.

Ronzitti, N. Il seggio europeo alle nazioni unite. *Rivista di diritto internazionale* vol. 90, iss. 4 (2008): p. 79.

24. Natural resources

Burns, W. C. G. A Voice for the Fish? Climate Change Litigation and Potential Causes of Action for Impacts Under the United Nations Fish Stocks Agreement. *Santa Clara Law Review* vol. 48, iss. 3 (2008): p. 605.

Fabra, A., and V. Gascon. The Convention on the Conservation of Antarctic Marine Living Resources (CCAMLR) and the Ecosystem Approach. *The International Journal of Marine and Coastal Law* vol. 23, iss. 3 (2008): p. 567.

Pincus, N. R. Groundwater and International Law: The Need for Specific Regulation. *University of Denver Water Law Review* vol. 11, iss. 2 (2008): p. 313.

25. Non-governmental organizations

Graubart, J. NGOs and the Security Council: Authority all Around but for Whose Benefit? In *The UN Security Council and the Politics of International Authority.* Edited by B. Cronin and I. Hurd. (London [United Kingdom]: Routledge, 2008). p. 154.

Hachez, N. The Relations between the United Nations and Civil Society: Past, Present, and Future. *International Organizations Law Review* vol. 5, iss. 1 (2008): p. 49.

26. Outer space law

Benkö, M., and K. Schrogl. The UN Committee on the Peaceful Uses of Outer Space: Adoption of the Resolution on Enhancing Registration Practice and of the UNCOPUOS Space Debris Mitigation Guidelines. *Zeitschrift für Luft- und Weltraumrecht* vol. 57, iss. 3 (2008): p. 335.

27. Peaceful settlement of disputes

Peters, A. and B. Grubenmann. Diplomatie préventive, prévention des conflits et réforme des Nations Unies. *La ONU y el mantenimiento de la paz en el siglo XXI.* Edited by J. Cardona Llorens. (Valencia [Spain]: Tirant lo Blanch, 2008). p. 29.

Peyró Llopis, A. Réforme des Nations Unies et rôle des organisations régionales dans le maintien de la paix. *La ONU y el mantenimiento de la paz en el siglo XXI.* Edited by J. Cardona Llorens. (Valencia [Spain]: Tirant lo Blanch, 2008). p. 433.

28. Maintenance of international peace and security, including United Nations authorized operations, peacekeeping and related activities

Arnold, R. *Law Enforcement within the Framework of Peace Support Operations*. (Leiden [The Netherlands]: Nijhoff, 2008). 442 p.

Aznar Gómez, M. J. La administración internacionalizada del territorio por parte de la Organización de las Naciones Unidas. *La ONU y el mantenimiento de la paz en el siglo XXI.* Edited by J. Cardona Llorens. (Valencia [Spain]: Tirant lo Blanch, 2008). p. 199.

Berdal, M. The Security Council and Peacekeeping. In *The United Nations Security Council and War: The Evolution of Thought and Practice since 1945.* Edited by V. Lowe. (Oxford [United Kingdom]: Oxford University Press, 2008). p. 175.

Bodeau-Livinec, P., G. Buzzini and S. Villalpando. Behrami & Behrami v. France, Saramati v. France, Germany and Norway (case report). *American Journal of International Law* vol. 102, iss. 2 (2008): p. 323.

Brooks, D., and M. Chorev. Ruthless Humanitarianism: Why Marginalizing Private Peacekeeping Kills People. In *Private Military and Security Companies: Ethics, Policies and Civil-Military Relations.* Edited by A. Alexandra, D. Baker, and M. Caparini. (London [United Kingdom]: Routledge, 2008). p. 116.

Burgess, S. F. The Maintenance of International Peace and Security by the UN and the Role of the Secretary General. *International Peacekeeping* vol. 12 (2008): p. 39.

Campbell, S. P., and A. T. Kasperen. The UN's Reforms: Confronting Integration Barriers. *International Peacekeeping* vol. 15, iss. 4 (2008): p. 470.

Carlson, S. N. Legal and Judicial Rule of Law Work in Multi-Dimensional Peacekeeping Operations: Lessons-Learned Study. *International Peacekeeping* vol. 12 (2008): p. 111.

Chapaux, V. La réforme des Nations Unies et la consolidation de la paix: la création de la Commission de consolidation de la paix. *La ONU y el mantenimiento de la paz en el siglo XXI.* Edited by J. Cardona Llorens. (Valencia [Spain]: Tirant lo Blanch, 2008). p. 245.

Chesterman, S. 'Ownership': The Transfer of Authority in Postconflict Operations. In *Civil War and the Rule of Law: Security, Development, Human Rights.* Edited by A. Hurwitz. (Boulder, Colorado [United States]: Lynne Rienner, 2008). p. 139.

De Coning, C. Civil-Military Coordination and UN Peacebuilding. *International Peacekeeping* vol. 11 (2008): p. 47.

Defeis, E. F. U.N. Peacekeepers and Sexual Abuse and Exploitation: An End to Impunity. *Washington University Global Studies Law Review* vol. 7, iss. 2 (2008): p. 185.

Faggart, C. UN Peacekeeping After Rwanda: Lessons Learned Or Mistakes Forgotten. *Penn State International Law Review* vol. 27 (2008): p. 495.

Faite, A. Multinational Forces Acting Pursuant to a Mandate of the United Nations: Specific Issues on the Applicability of International Humanitarian Law. *International Peacekeeping* vol. 11 (2008): p. 143.

Gowan, R. The Strategic Context: Peacekeeping in Crisis, 2006-08. *International Peacekeeping* vol. 15, iss. 4 (2008): p. 453.

Halling, M., and B. Bookey. Peacekeeping in Name Alone: Accountability for the United Nations in Haiti. *Hastings International and Comparative Law Review* vol. 31, iss. 1 (2008): p. 461.

Hänggi, H., and V. Scherrer. Towards an Integrated Security Sector Reform Approach in UN Peace Operations. *International Peacekeeping* vol. 15, iss. 4 (2008): p. 486.

Hanrahan, M. The Special Committee on Peacekeeping Operations: 2006 Season. *International Peacekeeping* vol. 12 (2008): p. 23.

—-. The United Nations Special Committee on Peacekeeping Operations: From 1965 to 2005. *International Peacekeeping* vol. 11 (2008): p. 29.

Harmer, A. Integrated Missions: A Threat to Humanitarian Security? *International Peacekeeping* vol. 15, iss. 4 (2008): p. 528.

Harrington, A. R. Prostituting Peace: The Impact of Sending State's Legal Regimes on U. N. Peacekeeper Behavior and Suggestions to Protect the Populations Peacekeepers Guard. *Journal of Transnational Law and Policy* vol. 17, iss. 2 (2008): p. 217.

Hausotter, J. O. The Uses of Peacekeeping: The United Nations Stabilization Mission in Haiti. *The Fletcher Forum of World Affairs* vol. 32, iss. 1 (2008): p. 145.

Heldt, B. Trends from 1948 to 2005: How to View the Relation between the United Nations and Non-UN Entities. In *Peace Operations: Trends, Progress, and Prospects.* Edited by D. C. F. Daniel, P. Taft, and S. Wiharta. (Washington, D.C. [United States]: Georgetown University Press, 2008). p. 9.

Hodgkinson, D. B. Human Rights Training to Law Enforcement Agents: A Key to PSO Success. In *Law Enforcement within the Framework of Peace Support Operations.* Edited by R. Arnold. (Leiden [The Netherlands]: Nijhoff, 2008). p. 311.

Hossain, K. The Challenge of Peace Management: The Role of the United Nations Secretary General. *Indian Journal of International Law* vol. 48, iss. 2 (2008): p. 232.

Jenkins, R. Organizational Change and Institutional Survival: The Case of the U.N. Peacebuilding Commission. *Seton Hall Law Review* vol. 38, iss. 4 (2008): p. 1327.

Klappe, B. F. International Peace Operations. In *The Handbook of International Humanitarian Law.* Edited by D. Fleck. 2nd ed. (Oxford [United Kingdom]: Oxford University Press, 2008). p. 635.

Larsen, K. M. Attribution of Conduct in Peace Operations: The 'Ultimate Authority and Control' Test. *European Journal of International Law* vol. 19, iss. 3 (2008): p. 509.

Lebovic, J. H. Uniting for Peace? Democracies and United Nations Peace Operations After the Cold War. In *International Law. Volume 3.* Edited by B. A. Simmons. (London [United Kingdom]: SAGE, 2008). p. 152.

Lüder, S. R. Responsibility of States and International Organisations in Respect to United Nations Peace-Keeping Missions. *International Peacekeeping* vol. 12 (2008): p. 83.

MacQueen, N. Judging Peacekeeping Outcomes: Three Perspectives on UN Operations. *International Peacekeeping* vol. 12 (2008): p. 1.

Mansson, K. UN Peace Operations and Security Council Resolutions: A Tool for Measuring the Status of International Human Rights Law? *Netherlands Quarterly of Human Rights* vol. 26, iss. 1 (2008): p. 79.

Peace Operations and Human Rights Edited by R. Murphy, and K. Månsson. (London [United Kingdom]: Routledge, 2008). 178 p.

Onana, R., and H. Taylor. MONUC and SSR in the Democratic Republic of Congo. *International Peacekeeping* vol. 15, iss. 4 (2008): p. 501.

O'Neill, W. G. UN Peacekeeping Operations and Rule of Law Programs. In *Civil War and the Rule of Law: Security, Development, Human Rights*. Edited by A. Hurwitz. (Boulder, Colorado [United States]: Lynne Rienner, 2008). p. 91.

Orakhelashvili, A. The Legal Framework of Peace Operations by Regional Organisations. *International Peacekeeping* vol. 11 (2008): p. 111.

Oswald, B. The Treatment of Detainees by Peacekeepers: Applying Principles and Standards at the Point of Detention. In *Law Enforcement within the Framework of Peace Support Operations*. Edited by R. Arnold. (Leiden [The Netherlands]: Nijhoff, 2008). p. 197.

Patterson, M. A Corporate Alternative to United Nations Ad Hoc Military Deployments. *Journal of Conflict and Security Law* vol. 13, iss. 2 (2008): p. 215.

Quénivet, N. The Role of the International Criminal Court in the Prosecution of Peacekeepers for Sexual Offenses. In *Law Enforcement within the Framework of Peace Support Operations*. Edited by R. Arnold. (Leiden [The Netherlands]: Nijhoff, 2008). p. 399.

—-. The United Nations' Legal Obligations in Terms of Rule of Law in Peacebuilding Operations. *International Peacekeeping* vol. 11 (2008): p. 203.

Rees, E. Security Sector Reform (SSR) and Peace Operations: 'Improvisation and Confusion' from the Field. *International Peacekeeping* vol. 12 (2008): p. 139.

Remiro Brotons, A. Reforma de las Naciones Unidas y papel de los acuerdos regionales en el mantenimiento de la paz. *La ONU y el mantenimiento de la paz en el siglo XXI.* Edited by J. Cardona Llorens. (Valencia [Spain]: Tirant lo Blanch, 2008). p. 417.

Rennie, E. Trafficking in Human Beings: Reduction Strategies for Law Enforcement in Peace Support Operations. In *Law Enforcement within the Framework of Peace Support Operations*. Edited by R. Arnold. (Leiden [The Netherlands]: Nijhoff, 2008). p. 381.

Richmond, O. The UN and Liberal Peacebuilding: Consensus and Challenges. In *Contemporary Peacemaking: Conflict, Peace Processes and Post-War Reconstruction.* Edited by J. Darby and R. Mac Ginty. 2nd ed. (New York, New York [United States]: Palgrave MacMillan, 2008). p. 257.

Roberts, A. Proposals for UN Standing Forces: A Critical History. In *The United Nations Security Council and War: The Evolution of Thought and Practice since 1945.* Edited by V. Lowe. (Oxford [United Kingdom]: Oxford University Press, 2008). p. 99.

Sambanis, N., and J. Schulhofer-Wohl. Evaluating Multilateral Interventions in Civil Wars: A Comparison of UN and Non-UN Peace Operations. In *Multilateralism and Security Institutions in an Era of Globalization.* Edited by D. Bourantonis, K. Ifantis, and P. Tsakonas. (Abingdon [United Kingdom]: Routledge, 2008). p. 252.

Schweisfurth, T. The United Nations' Peacebuilding Commission's First Year. In *Frieden in Freiheit = Peace in Liberty = Paix En Liberté : Festschrift Für Michael Bothe Zum 70*. Edited by A. Fischer-Lescano, *et al*. (Baden-Baden [Germany]: Nomos, 2008). p. 207.

Shetler-Jones, P. Intelligence in Integrated UN Peacekeeping Missions: The Joint Mission Analysis Centre. *International Peacekeeping* vol. 15, iss. 4 (2008): p. 517.

Sloan, J. UN Peacekeeping Under Kofi Annan: Recourse to Force. *International Peacekeeping* vol. 12 (2008): p. 51.

Soder, K. Multilateral Peace Operations in 2007. *SIPRI Yearbook* (2008): p. 113.

Stahn, C. Lawmaking by International Administrations. *International Peacekeeping* vol. 11 (2008): p. 81.

Starmer, K. Responsibility for Troops Abroad: UN Mandated Forces and Issues of Human Rights Accountability. *European Human Rights Law Review* vol. 2008, iss. 3 (2008): p. 318.

—-. Responsibility for Troops Abroad: UN-Mandated Forces and Issues of Human Rights Accountability. In *The Iraq War and International Law*. Edited by P. Shiner and A. Williams. (Oxford [United Kingdom]: Hart, 2008). p. 265.

Sweetser, C. E. Providing Effective Remedies to Victims of Abuse by Peacekeeping Personnel. *New York University Law Review* vol. 83, iss. 5 (2008): p. 1643.

Taft, P. Preparing Nations for Peace: Specialized Requirements for Complex Missions. In *Peace Operations: Trends, Progress, and Prospects*. Edited by D. C. F. Daniel, P. Taft, and S. Wiharta. (Washington, D.C. [United States]: Georgetown University Press, 2008). p. 71.

Van, D. T. Attribution of Conduct by State Armed Forces Participating in UN-Authorised Operations: The Impact of Behrami and Al-Jedda. *Australian International Law Journal* vol. 15 (2008): p. 9.

Walter, C. "Réforme des Nations Unies et rôle des organisations régionales dans le maintien de la paix." *La ONU y el mantenimiento de la paz en el siglo XXI*. Edited by J. Cardona Llorens. (Valencia [Spain]: Tirant lo Blanch, 2008). p. 465.

Wiharta, S. Planning and Deploying Peace Operations. *SIPRI Yearbook* (2008): p. 97.

Wilde, R. Understanding the International Territorial Administration Accountability Deficit: Trusteeship and the Legitimacy of International Organizations. *International Peacekeeping* vol. 12 (2008): p. 93.

Williams, P. D., and A. J. Bellamy. Contemporary Peace Operations: Four Challenges for the Brahimi Paradigm. *International Peacekeeping* vol. 11 (2008): p. 1.

Yamashita, H. 'Impartial' use of Force in United Nations Peacekeeping. *International Peacekeeping* vol. 15, iss. 5 (2008): p. 615.

Zwanenburg, M. UN Peace Operations between Independence and Accountability. *International Organizations Law Review* vol. 5, iss. 1 (2008): p. 23.

29. Political and security questions

Benton, L. Anti-Corruption. *The International Lawyer* vol. 42, iss. 2 (2008): p. 709.

Berdal, M. The UN Peacebuilding Commission: The Rise and Fall of a Good Idea. In *Whose Peace? Critical Perspectives on the Political Economy of Peacebuilding.* Edited by M. Pugh, N. Cooper, and M. Turner. (Basingstoke [United Kingdom]: Palgrave Macmillan, 2008). p. 356.

Brauch, H. G. Conceptualising the Environmental Dimension of Human Security in the UN. In *Rethinking Human Security.* Edited by M. Goucha and J. Crowley. (Malden, Massachusetts [United States]: Wiley-Blackwell, 2008). p. 19.

Carlson, G. S. An Offer they can't Refuse? The Security Council Tells North Korea to Re-Sign the Nuclear Non-Proliferation Treaty. *Columbia Journal of Transnational Law* vol. 46, iss. 2 (2008): p. 420.

Feinäugle, C. A. Legal Protection of the Individual Against UN Sanctions in a Multilevel System. In *Multilevel Regulation and the EU: The Interplay between Global, European and National Normative Processes.* Edited by A. Follesdal, R. A. Wessel, and J. Wouters. (Leiden [The Netherlands]: Nijhoff, 2008).

Feldman, D. The Role of Constitutional Principles in Protecting International Peace and Security through International, Supranational and National Legal Institutions. *The New Zealand Journal of Public and International Law* vol. 6, iss. 1 (2008): p. 1.

Fujio, C. From Soft to Hard Law: Moving Resolution 1325 on Women, Peace and Security Across the Spectrum. *Georgetown Journal of Gender and the Law* vol. 9, iss. 1 (2008): p. 215.

Reich, J. Due Process and Sanctions Targeted Against Individuals Pursuant to U.N. Resolution 1267 (1999). *The Yale Journal of International Law* vol. 33, iss. 2 (2008): p. 505.

Spernbauer, M. Musical Chairs Revisited: Status and Terms of Participation of the European Union in the UN Peacebuilding Commission. *International Organizations Law Review* vol. 5, iss. 2 (2008): p. 299.

30. Progressive development and codification of international law (in general)

Forteau, M. L'idée d'une culture internationale du droit international et les Nations Unies. In *Droit international et diversité des cultures juridiques: journée franco-allemande = International law and diversity of legal cultures.* Edited by Société française pour le Droit international. (Paris [France]: Pedone, 2008). p. 357.

Glocke, J., and S. Klatte. Die tatigkeit der International Law Commission im Jahre 2008. *German Yearbook of International Law* vol. 51 (2008): p. 705.

Johnstone, I. Law-Making through the Operational Activities of International Organizations. *The George Washington International Law Review* vol. 40, iss. 1 (2008).

New Voices: The Role of International Legal Institutions in Norm Development. *Proceedings of the Annual Meeting-American Society of International Law* vol. 102 (2008): p. 61.

Reynaers Kini, E. *The Precautionary Principle, Multilateral Treaties and the Formation of Customary International Law: A Symptom of a Larger Conundrum?* (Lugano: Editions Interuniversitaires suisses EDIS, 2008). 174 p.

Wood, M. The General Assembly and the International Law Commission: What Happens to the Commission's Work and Why? In *International Law between Universalism and Fragmentation: Festschrift in Honour of Gerhard Hafner.* Edited by I. Buffard, *et al.* (Leiden [The Netherlands]: Martinus Nijhoff, 2008). p. 373.

31. Recognition of states

Orakhelashvili, A. Statehood, Recognition and the United Nations System: A Unilateral Declaration of Independence in Kosovo. *Max Planck Yearbook of United Nations Law* vol. 12 (2008): p. 1.

32. Refugees and internally displaced persons

Chalchoul, H. Le cadre juridique de la protection internationale des réfugiés. *Études internationales* vol. 109, iss. 4 (2008): p. 168.

Edwards, A. The Optional Protocol to the Convention Against Torture and the Detention of Refugees. *International and Comparative Law Quarterly* vol. 57, iss. 4 (2008): p. 789.

Farmer, A. Non-Refoulement and Jus Cogens: Limiting Anti-Terror Measures that Threaten Refugee Protection. *Georgetown Immigration Law Journal* vol. 23, iss. 1 (2008): p. 1.

Harrell-Bond, B. Protests Against the UNHCR to Achieve Rights: Some Reflections. In *Forced Displacement: Why Rights Matter.* Edited by K. Grabska and L. Mehta. (Basingstoke [United Kingdom]: Palgrave Macmillan, 2008). p. 222.

Loescher, G. *The United Nations High Commissioner for Refugees (UNHCR): The Politics and Practice of Refugee Protection into the Twenty-First Century.* (London [United Kingdom]: Routledge, 2008). 161 p.

Lui, R. State Sovereignty and International Refugee Protection. In *Re-Envisioning Sovereignty: The End of Westphalia?* Edited by T. Jacobsen, C. Sampford, and R. Thakur. (Aldershot [United Kingdom]: Ashgate, 2008). p. 151.

Piotrowicz, R. The UNHCR's Guidelines on Human Trafficking. *International Journal of Refugee Law* vol. 20, iss. 2 (2008): p. 242.

Trevisanut, S. The Principle of Non-Refoulement at Sea and the Effectiveness of Asylum Protection. *The Principle of Non-Refoulement at Sea and the Effectiveness of Asylum Protection* vol. 12 (2008): p. 205.

33. Rule of law

Bühler, K. G. The Australian Rule of Law Initiative 2004-2008: The Panel Series, the Advisory Group and the Final Report on the UN Security Council and the Rule of Law. *Max Planck Yearbook of United Nations Law* vol. 12 (2008): p. 409.

Bull, C. *No Entry without Strategy: Building the Rule of Law Under UN Transitional Administration*. (Tokyo [Japan]: United Nations University Press, 2008). 315 p.

Huang, R. Counterterrorism and the Rule of Law. In *Civil War and the Rule of Law: Security, Development, Human Rights*. Edited by A. G. Hurwitz and R. Huang. (Boulder, Colorado [United States]: Lynne Rienner Pub, 2008). p. 261.

Hurwitz, A. G., and R. Huang. *Civil War and the Rule of Law: Security, Development, Human Rights*. (Boulder, Colorado [United States]: Lynne Rienner Publishers, 2008). 351 p.

O'Neill, W. G. UN Peacekeeping Operations and Rule of Law Programs. In *Civil War and the Rule of Law: Security, Development, Human Rights*. Edited by A. Hurwitz. (Boulder, Colorado [United States]: Lynne Rienner, 2008). p. 91.

Quénivet, N. The United Nations' Legal Obligations in Terms of Rule of Law in Peacebuilding Operations. *International Peacekeeping* vol. 11 (2008): p. 203.

Rausch, C., and V. O'Connor. Model Codes: Laying the Foundations of the Rule of Law. In *Civil War and the Rule of Law: Security, Development, Human Rights*. Edited by A. Hurwitz. (Boulder, Colorado [United States]: Lynne Rienner, 2008). p. 115.

Sicilianos, L.-A. La contribution des Nations Unies à la démocratisation de l'état. In *Democracia y libertades en el derecho internacional contemporáneo*. (Lima [Peru]: Pontificia Universidad Católica del Perú, 2008). p. 159.

Vlassis, D., and D. Gottwald. Implementing the Asset Recovery Provisions of the UNCAC. In *Recovering Stolen Assets*. Edited by M. Pieth. (Bern [Switzerland]: Lang, 2008). p. 353.

34. Self-defence

Chainoglou, K. *Reconceptualising the Law of Self-Defence*. (Brussels [Belgium]: Bruylant, 2008). 488 p.

Sanjosé Gil, A. La legítima defensa individual y colectiva y el artículo 51 de la Carta de las Naciones Unidas. *La ONU y el mantenimiento de la paz en el siglo XXI*. Edited by J. Cardona Llorens. (Valencia [Spain]: Tirant lo Blanch, 2008). p. 329.

35. State responsibility

Abi-Saab, G. Whatever Happened to Article 19? In *Frieden in Freiheit = Peace in liberty = Paix en liberté: Festschrift für Michael Bothe zum 70*. Edited by A. Fischer-Lescano, *et al*. (Baden-Baden [Germany]: Nomos, 2008). p. 821.

Degan, V. Responsibility of States and Individuals for Genocide and Other International Crimes. In *International Law between Universalism and Fragmentation: Festschrift in Honour of Gerhard Hafner*. Edited by I. Buffard, *et al*. (Leiden [The Netherlands]: Martinus Nijhoff, 2008). p. 511.

Johnstone, R. L. State Responsibility: A Concerto for Court, Council and Committee. *Denver Journal of International Law and Policy* vol. 37, iss. 1 (2008): p. 63.

Lagrange, P. Responsabilité des Etats pour actes accomplis en application du Chapitre VII de la Charte des Nations Unies. *Revue générale de droit international public* vol. 112, iss. 1 (2008): p. 85.

Van, D. T. Attribution of Conduct by State Armed Forces Participating in UN-Authorised Operations: The Impact of Behrami and Al-Jedda. *Australian International Law Journal* vol. 15 (2008): p. 9.

Voigt, C. State Responsibility for Climate Change Damages. *Nordic Journal of International Law* vol. 77, iss. 1/2 (2008): p. 1.

36. State sovereignty

Alebeek, R. van. *The Immunity of States and their Officials in International Criminal Law and International Human Rights Law.* (Oxford [United Kingdom]: Oxford University Press, 2008). 449 p.

Bradley, C. A., and J. G. Kelley. The Concept of International Delegation. *Law and Contemporary Problems* vol. 71, iss. 2 (2008): p. 1.

Changing Perceptions of Sovereignty and Human Rights: Essays in Honour of Cees Flinterman Edited by I. Boerefijn, and J. Goldschmidt. (Antwerp [Netherlands]: Intersentia, 2008). 582 p.

Epstein, D., and S. O'Halloran. Sovereignty and Delegation in International Organizations. *Law and contemporary problems* vol. 71, iss. 1 (2008): p. 77.

Guzman, A. T., and J. Landsidle. The Myth of International Delegation. *California Law Review* vol. 96, iss. 6 (2008): p. 1693.

Hathaway, O. A. International Delegation and State Sovereignty. *Law and contemporary problems* vol. 71, iss. 2 (2008): p. 115.

Hellema, D. Sovereignty and Peacebuilding. In *Changing Perceptions of Sovereignty and Human Rights: Essays in Honour of Cees Flinterman.* Edited by I. Boerefijn and J. Goldschmidt. (Antwerp [Belgium]: Intersentia, 2008). p. 471.

Kuper, L. Sovereign Territorial State: The Right to Genocide. In *Genocide: Vol. 4: Prevention, Intervention, and Accountability.* Edited by A. Jones. (Los Angeles, California [United States]: Sage, 2008). p. 17.

Lui, R. State Sovereignty and International Refugee Protection. In *Re-Envisioning Sovereignty: The End of Westphalia?* Edited by T. Jacobsen, C. Sampford, and R. Thakur. (Aldershot, [United Kingdom]: Ashgate, 2008). p. 151.

Preub, U. K. Equality of States - its Meaning in a Constitutionalized Global Order. *Chicago Journal of International Law* vol. 9, iss. 1 (2008): p. 17.

Ramcharan, B. G. Sovereignty of Impunity and Contemporary Challenges of International Protection. In *Changing Perceptions of Sovereignty and Human Rights: Essays in Honour of Cees Flinterman.* Edited by I. Boerefijn and J. Goldschmidt. (Antwerp [Netherlands]: Intersentia, 2008). p. 439.

37. State succession

Orakhelashvili, A. Statehood, Recognition and the United Nations Systems: A Unilateral Declaration of Independence in Kosovo. *Max Planck Yearbook of United Nations Law* vol. 12 (2008): p. 1.

38. Transitional justice

Bull, C. *No Entry without Strategy: Building the Rule of Law Under UN Transitional Administration*. (Tokyo [Japan]: United Nations University Press, 2008). 315 p.

Burke-White, W. The Domestic Influence of International Criminal Tribunals: The International Criminal Tribunal for the Former Yugoslavia and the Creation of the State Court of Bosnia and Herzegovina. *Columbia Journal of Transnational Law* vol. 46, iss. 2 (2008): p. 279.

After Genocide: Transitional Justice, Post-Conflict Reconstruction and Reconciliation in Rwanda and Beyond. Edited by P. Clark, and Z. D. Kaufman. (London [United Kingdom]: Hurst, 2008). 399 p.

Doria, J. The ICC and the Peace Vs. Justice Dilemma. *International Studies Journal* vol. 5, iss. 1 (2008): p. 1.

Ford, C. E., and B. A. Oppenheim. Neotrusteeship Or Mistrusteeship? the 'Authority Creep' Dilemma in United Nations Transitional Administration. *Vanderbilt Journal of Transnational Law* vol. 41, iss. 1 (2008): p. 55.

Hofmann, R. International Protection of Human Rights and International Territorial Administration: A Legal Black Hole. In *Frieden in Freiheit = Peace in liberty = Paix en liberté : Festschrift für Michael Bothe zum 70.* Edited by A. Fischer-Lescano, *et al.* (Baden-Baden [Germany]: Nomos, 2008). p. 123.

Keller, L. M. Achieving Peace with Justice: The International Criminal Court and Ugandan Alternative Justice Mechanisms. *Connecticut Journal of International Law* vol. 23, iss. 2 (2008): p. 209.

McMahon, P. C., and D. P. Forsythe. The ICTY's Impact on Serbia: Judicial Romanticism Meets Network Politics. *Human Rights Quarterly* vol. 30, iss. 2 (2008): p. 412.

Sripati, V. The United Nation's Role in Post-Conflict Constitution-Making Processes: TWAIL Insights. *International Community Law Review* vol. 10, iss. 4 (2008): p. 411.

Stahn, C. *The Law and Practice of International Territorial Administration: Versailles to Iraq and Beyond*. (Cambridge [United Kingdom]: Cambridge University Press, 2008). 828 p.

Tondini, M. Chapter 10: Putting an End to Human Rights Violations by Proxy: Accountability of International Organizations and Member States in the Framework of Jus Post Bellum. In *Jus Post Bellum Towards a Law of Transition from Conflict to Peace.* Edited by C. Stahn and J. K. Kleffner. (Hague [The Netherlands]: TMC Asser Press, 2008). p. 187.

Weller, M. Interim-Governance for Kosovo: The Rambouillet Agreement and the Constitutional Framework Developed Under UN Administration. In *Settling Self-Determination Disputes: Complex Power-Sharing in Theory and Practice.* Edited by M. Weller and B. Metzger. (Leiden [The Netherlands]: Nijhoff, 2008). p. 243.

Welsh, J. M. The Rwanda Effect: Development and Endorsement of the 'Responsibility to Protect'. In *After Genocide: Transitional Justice, Post-Conflict Reconstruction and Reconciliation in Rwanda and Beyond.* Edited by P. Clark and Z. D. Kaufman. (London [United Kingdom]: Hurst, 2008). p. 333.

Werzer, J. The UN Human Rights Obligations and Immunity: An Oxymoron Casting a Shadow on the Transitional Administrations in Kosovo and East Timor. *Nordic Journal of International Law* vol. 77, iss. 1/2 (2008): p. 105.

39. Trusteeship

Wilde, R. *International Territorial Administration: How Trusteeship and the Civilizing Mission Never Went Away.* (Oxford [United Kingdom]: Oxford University Press, 2008). 640 p.

40. Use of force

Andrés Sáenz de Santa María, P. Las normas relativas al uso de la fuerza: la seguridad colectiva y la legítima defensa en el contexto de la reforma de las Naciones Unidas. In *La seguridad comprometida: nuevos desafíos, amenazas y conflictos armados.* Edited by C. García and A. J. Rodrigo. (Madrid [Spain]: Tecnos, 2008). p. 113.

Blix, H. Legal Restraints on the use of Armed Force. In *Law at War: The Law as it was and the Law as it should be.* Edited by O. Engdahl, P. Wrange, and O. Bring. (Leiden [Netherlands]: Nijhoff, 2008). p. 21.

Christodoulidou, T. *The use of Force and the Promotion and Protection of Human Rights.* (Brussels [Belgium]: Bruylant, 2008). 305 p.

Fearon, J. D. International Institutions and Collective Authorization of the use of Force. In *Can the World be Governed? Possibilities for Effective Multilateralism.* Edited by A. S. Alexandroff. (Waterloo, Ontario [Canada]: Wilfrid Laurier University Press, 2008). p. 160.

Fletcher, G. P., and J. D. Ohlin. *Defending Humanity: When Force is Justified and Why.* (Oxford [United Kingdom]: Oxford University Press, 2008). 268 p.

Franck, T. M. On Proportionality of Countermeasures in International Law. *American Journal of International Law* vol. 102, iss. 4 (2008): p. 715.

Glennon, M., and A. Pellet. Force and the Settlement of Political Disputes: The Debate = La force et le règlement des différends politiques: arguments croisés. *Actualité de la Conférence de La Haye de 1907, Deuxième Conférence de la Paix = Topicality of the 1907 Hague Conference, the Second Peace Conference. The Hague, The Netherlands, 6-7 September 2007.* Edited by Y. Daudet. (Leiden [The Netherlands]: Nijhoff, 2008). p. 225.

Gray, C. The Charter Limitations on the use of Force: Theory and Practice. In *The United Nations Security Council and War: The Evolution of Thought and Practice since 1945.* Edited by V. Lowe. (Oxford [United Kingdom]: Oxford University Press, 2008). p. 86.

Gray, C. D. *International Law and the use of Force*. 3rd ed. (Oxford [United Kingdom]: Oxford University Press, 2008). 455 p.

Guiora, A. N. Anticipatory Self-Defence and International Law: A Re-Evaluation. *Journal of Conflict and Security Law* vol. 13, iss. 1 (2008): p. 3.

Gutiérrez Espada, C. Evolución de la prohobición del uso de la fuerza en las relaciones internacionales: 'políticos' versus 'jueces'. *Anuario argentino de derecho internacional* vol. 16 (2008): p. 79.

Harrell, P. E. Modern-Day 'Guarantee Clauses' and the Legal Authority of Multinational Organizations to Authorize the use of Military Force. *The Yale Journal of International Law* vol. 33, iss. 2 (2008): p. 417.

McWhinney, E. Canada and the 2003 Invasion of Iraq: Prime Minister Chrétien's Gloss on the UN Charter Principles on the use of Force. *The Canadian Yearbook of International Law* vol. 45 (2008): p. 271.

Pellet, A. Le recours à la force, le droit et la légitimité: notes sur les problèmes posés par le principe du recours à la force armée en cas de carence du Conseil de sécurité. In *Frieden in Freiheit = Peace in liberty = Paix en liberté: Festschrift für Michael Bothe zum 70.* Edited by A. Fischer-Lescano, *et al.* (Baden-Baden [Germany]: Nomos, 2008). p. 249.

Sofaer, A. D. International Security and the use of Force. In *Progress in International Law.* Edited by R. A. Miller and R. M. Bratspies. (Leiden [The Netherlands]: Nijhoff, 2008). p. 541.

Zacklin, R. The Hague Conference and Restrictions on the use of Force: The Question of the use of Force Today: The Point of View of the United Nations. *Actualité de la Conférence de La Haye de 1907, Deuxième Conférence de la Paix = Topicality of the 1907 Hague Conference, the Second Peace Conference. The Hague, The Netherlands, 6-7 September 2007.* Edited by Y. Daudet. (Leiden [The Netherlands]: Nijhoff, 2008). p. 251.

Zemanek, K. The Prohibition to use Force After Sixty Years of Abuse. In *International Law between Universalism and Fragmentation: Festschrift in Honour of Gerhard Hafner.* Edited by I. Buffard, *et al.* (Leiden [The Netherlands]: Martinus Nijhoff, 2008). p. 287.