ST/LEG/SER.C/47

UNITED NATIONS JURIDICAL YEARBOOK 2009

UNITED NATIONS • NEW YORK, 2010

ST/LEG/SER.C/47

UNITED NATIONS PUBLICATION
Sales No. E.10.V.8
ISBN 978-92-1-133690-0

Contents

Page

Page

Page

Page

Page

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-seventh 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. Provisions which are included in these two chapters entered into force in 2009.

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 2009.

In chapter VIII are found decisions given in 2009 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 2009.

All documents published in the *Juridical Yearbook* were supplied by the organizations concerned, with the exception of the legislative texts and judicial decisions in chapters I and VIII, which, unless otherwise indicated, were communicated by Governments at the request of the Secretary-General. Treaty provisions, legislative texts and judicial decisions may have been subject to minor editing by the Secretariat.

ABBREVIATIONS

ABCC	Advisory Board on Compensation Claims (UNDP)
ACABQ	Advisory Committee on Administrative and Budgetary Questions (United Nations)
AFRA	African Regional Co-operative Agreement for Research, Development and Training Related to Nuclear Science and Technology
AMISOM	African Union Mission in Somalia
ASG	Assistant Secretary-General
AU	African Union
AVL	United Nations Audiovisual Library of International Law
BINUB	United Nations Integrated Office in Burundi
BINUCA	United Nations Integrated Peacebuilding Office in the Central African Republic
BONUCA	United Nations Peacebuilding Support Office in the Central African Republic
CCLM	Committee on Constitutional and Legal Matters (FAO)
CCPCJ	Commission on Crime Prevention and Criminal Justice (ECOSOC)
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
CDIP	Committee on Development and Intellectual Property (WIPO)
CEDAW	Committee on the Elimination of Discrimination against Women
CERN	European Organization for Nuclear Research
CGPCS	Contact Group on Piracy off the coast of Somalia (IMO)
CLCS	Commission on the Limits of the Continental Shelf
CMI	Comité Maritime International
CMS	Convention on Migratory Species of Wild Animals
CNS	Convention on Nuclear Safety
COD/OLA	Codification Division, Office of Legal Affairs
CRBs	Central review bodies
CTBT	Comprehensive Nuclear-Test-Ban Treaty
CTBTO	Comprehensive Nuclear-Test-Ban Treaty Organization
CWC	Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction
DESA	Department of Economic and Social Affairs (United Nations)
DFS	Department of Field Support (United Nations)
DPA	Department of Political Affairs (United Nations)
DPI	Department of Public Information (United Nations)
DPKO	Department of Peacekeeping Operations (United Nations)

EBRD	European Bank for Reconstruction and Development
EC	European Community
ECA	Economic Commission for Africa
ECCC	Extraordinary Chambers in the Courts of Cambodia
ECOSOC	Economic and Social Council
ECOWAS	Economic Community of West African States
EPO	European Patent Organization
ESCAP	United Nations Economic and Social Commission for Asia and the Pacific
EU	European Union
EUFOR	European Union-led peacekeeping force
EURASEC	Eurasian Economic Community
Euratom	European Atomic Energy Community
FAO	Food and Agriculture Organization of the United Nations
FCTC	Framework Convention on Tobacco Control
FIDIC	International Federation of Consulting Engineers
GGE	Group of Governmental Experts
GLD	General Law Division (United Nations Office of Legal Affairs)
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
HRC	Human Rights Council (United Nations)
IAEA	International Atomic Energy Agency
IALL	International Association of Law Libraries
IBRD	International Bank for Reconstruction and Development
ICAO	International Civil Aviation Organization
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICJ	International Court of Justice
ICSID	International Centre for Settlement of Investment Disputes
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the former Yugoslavia
IDA	International Development Association
IFAD	International Fund for Agricultural Development
IFC	International Finance Corporation
IFRC	International Federation of Red Cross and Red Crescent Societies
IGC	The Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (WIPO)
IGOs	Intergovernmental organizations
IHR	International Health Regulations (WHO)

ILO	International Labour Organization
IMF	International Monetary Fund
IMLI	International Maritime Law Institute
IMO	International Maritime Organization
INT	Department of Institutional Integrity (IBRD)
ISO	International Organization for Standardization
ISA	International Seabed Authority
ITCOM	Information Technology and Communications Bureau (ILO)
ITLOS	International Tribunal for the Law of the Sea
ITSD	Information Technology Services Division (United Nations)
JAB	Joint Appeals Board (United Nations)
LDCs	Least Developed Countries
LLMC	Convention on Limitation of Liability for Maritime Claims
MARPOL	International Convention for the prevention of pollution from ships
MEPC	Marine Environment Protection Committee (IMO?)
MEU	Management Evaluation Unit (United Nations)
MICECI	ECOWAS Mission in Côte d'Ivoire
MIGA	Multilateral Investment Guarantee Agency (World Bank Group)
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
MSC	Maritime Safety Committee (IMO)
MSD	Medical Services Division (United Nations)
NATO	North Atlantic Treaty Organisation
NGO	Non-governmental organization
NPT	Treaty on Non-Proliferation of Nuclear Weapons
OAPR	Office of Audit and Performance Review (UNDP)
OCHA	Office for the Coordination of Humanitarian Affairs (United Nations)
OCSS	Office of Central Support Services (United Nations)
OECD	Organization for Economic Cooperation and Development
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)
OLADE	Latin American Energy Organization
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)
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
SFOR	Stabilization Force (Bosnia and Herzegovina)
SMCC	Staff Management Coordination Committee (United Nations)
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
TFED	Trade, Finance and Economic Development Division (United Nations)
TRIPS	Trade-Related Aspects of Intellectual Property Rights
UNAIDS	Joint United Nations Programme on HIV/AIDS
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
UNAT	United Nations Appeals Tribunal
UNCITRAL	United Nations Commission on International Trade Law
UNCLOS	United Nations Convention on the Law of the Sea
UNDC	United Nations Disarmament Commission
UNDP	United Nations Development Programme
UNDT	United Nations Dispute Tribunal
UNDSS	United Nations Department of Safety and Security (United Nations)
UNECA	United Nations Economic Commission for Africa
UNEP	United Nations Environmental Programme
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNFICYP	United Nations Peacekeeping Force in Cyprus
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
UNIDO	United Nations Industrial Development Organization
UNIIIC	United Nations International Independent Investigation Commission
UNIOGBIS	United Nations Integrated Peacebuilding Office in Guinea-Bissau
UNDOF	United Nations Disengagement Observer Force
UNIDROIT	International Institute for the Unification of Private Law

UNIFIL	United Nations Interim Force in Lebanon
UNIPSIL	United Nations Integrated Peacebuilding Office in Sierra Leone
UNISDR	United Nations International Strategy for Disaster Reduction
UNJSPF	United Nations Joint Staff Pension Fund
UNMAS	United Nations Mine Action Service
UNMEE	United Nations Mission in Ethiopia and Eritrea
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
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
UNSAC	United Nations Standing Advisory Committee on Security Questions in Central Africa
UNSCO	United Nations Special Coordinator for the Middle East Peace Process
UNSDRI	United Nations Social Defence Research Institute
UNSOA	United Nations Support Office for African Union Mission in Somalia
UNTAET	United Nations Transitional Authority in East Timor
UNTOP	United Nations Tajikistan Office of Peacebuilding
UNU	United Nations University
UPU	Universal Postal Union
WHO	World Health Organization
WIPO	World Intellectual Property Organization
WMU	World Maritime University
WTO	World Trade Organization?
UNWTO	United Nations World Tourism Organization

Part One

LEGAL STATUS OF THE UNITED NATIONS AND RELATED INTERGOVERNMENTAL ORGANIZATIONS

Chapter I

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

[No legislative texts concerning the legal status of the United Nations and related intergovernmental organizations to be reported for 2009.]

Chapter II

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

A. Treaties concerning the legal status of the United Nations

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

No States acceded to the Convention in 2009. As at 31 December 2009, there were 157 States parties to the Convention.**

2. Agreements relating to missions, offices and meetings

(*a*) Agreement between the United Nations Organization and the Government of the United States of America concerning the establishment of security for the United Nations presence in Iraq. New York, 31 December 2008***

Preamble

The United Nations Organization (hereinafter the "UN") and the Government of the United States of America (hereinafter the "USG"), referred to collectively as "the Parties" and individually as "Party";

Recalling the Agreement between the United Nations Organization and the Government of the United States of America Concerning the Establishment of Security for the United Nations Assistance Mission for Iraq done at New York on December 8, 2005 (the "2005 Agreement");

Noting that, in accordance with its Article VI, paragraph 2, the 2005 Agreement will terminate on December 31, 2008, when the mandate for the multinational force in Iraq under United Nations Security Council resolution 1790 (2007) expires;

---

* 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 on the website http://treaties.un.org/Pages/ParticipationStatus.aspx.

*** Entry into force on 1 January 2009, in accordance with article VII.

Recalling the letter dated 16 December 2008 from the President of the United Nations Security Council addressed to the Secretary-General of the United Nations which notes that armed forces of the United States will continue to be deployed in Iraq after that date at the request of the Government of Iraq and which welcomes the fact that, with the consent of the Government of Iraq, those forces will continue to contribute to the maintenance of security and stability in Iraq and to provide security for the UN presence in Iraq, including the United Nations Assistance Mission for Iraq (UNAMI);

Recalling the Agreement between the United States of America and the United Nations Organization Concerning the Provision of Services and Commodities on a Reimbursable Basis in Support of the Operations of the United Nations Assistance Mission in Iraq, done at New York and entered into force on December 29, 2004, as extended ("607 Agreement");

Desiring to take steps to provide a secure environment in which the United Nations is able to fulfill its important role in supporting the efforts of the Iraqi people and Government to strengthen institutions of representative government, promote political dialogue and national reconciliation, engage neighbouring countries, assist vulnerable groups, including refugees and internally displaced persons, and promote the protection of human rights and judicial and legal reform;

Wishing for this purpose to continue to provide for security for the United Nations presence in Iraq;

Noting the commitment of the Parties in assisting the people of Iraq and promoting the maintenance of security and stability in Iraq to act in accordance with international law; and

Recognizing the sovereign State of Iraq and its democratically elected and constitutionally based Government;

Have agreed as follows:

Article I. Establishment of Security

1. For the purpose of ensuring the safety and security of UN personnel in Iraq so they can effectively perform their tasks, and subject to Article VI (1) of this Agreement, the USG shall endeavor to ensure that the security tasks described in this Agreement are undertaken to the extent that such tasks are determined by the Commander of the United States Forces in Iraq to be operationally feasible and consistent with operational requirements.

2. Security surrounding designated UNAMI premises shall be established on the basis of three concentric areas of responsibility: an inner area, a middle area, and an outer area. Subject to paragraph 1 of this Article, it is envisioned that establishment of security in the foregoing areas shall be based on the following understandings:

a. The inner area or ring consists of designated UNAMI premises comprised of buildings and structures and the area immediately surrounding them up to and including the perimeter wall. Security in this area or ring shall be the responsibility of the UN except in circumstances where UNAMI facilities are situated or operations occur within areas where inner ring security is already provided by United States Forces.

b. The middle area or ring consists of the area immediately surrounding and controlling access to designated UNAMI premises, including approaches to such premises.

The middle area shall in each case include one or more secure vehicle and personnel search areas located a safe distance from the perimeter wall of the concerned premises. Security in this area, or ring shall be the responsibility of United States Forces or, as may be agreed between the Parties and a third State or States, and with the consent of the Government of Iraq, the forces of that third State or States. United States Forces in the Outer area shall support units assigned to the middle area, as necessary. United States Forces shall designate a quick reaction force for this purpose.

c. The outer area or ring consists of all areas of Iraq outside of the middle and inner areas. The United States Forces shall coordinate with the Government of Iraq concerning security in this area.

d. United States Forces shall provide: security for movements of UN personnel outside of U.S. facilities and areas and designated UNAMI premises including security of non-UNAMI premises that UN personnel may visit in the course of their official duties (it being understood that the United States Forces shall designate a quick reaction force to support, as necessary, units of the United States Forces that are providing such security); security for UN personnel deployed to Provincial Reconstruction Team sites, including for their movements to, from, and outside those sites; security for designated airfields used by UNAMI; search and rescue services support damage survey and control support; emergency medical support, including emergency medical evacuation services; temporary emergency evacuation of UN personnel from UNAMI premises and from Provincial Reconstruction Team sites to which they are deployed; explosive device disposal services, as necessary, and hostage recovery support, when requested.

e. United States Forces and UNAMI shall develop and coordinate plans to address circumstances that might necessitate the temporary, emergency evacuation of personnel from UNAMI premises and from Provincial Reconstruction Team sites to which UN personnel are deployed.

f. United States Forces and UNAMI shall cooperate to maintain in place and operation on the arrangements that were in place on the date of termination of the 2005 Agreement for the purposes of facilitating the movement of UN personnel into and out of Iraq, including by UNAMI ensuring that UN personnel comply with applicable Iraqi laws, regulations, and implementing arrangement with respect to exit and entry from Iraq, as well as the arrangements that were then in place for the initial provision of badges to UN personnel to facilitate their entry into and movement on facilities and areas provided for the use of United States Forces and means of transport.

3. Should the USG anticipate that United States Forces will not be in the position to perform a particular task set forth in this Article, or that they will only be able to do so at a substantially reduced level, because the task is not feasible operationally or is inconsistent with operational requirements, United States Forces shall, without delay, provide UNAMI with advance notification. In such an event, United States Forces and UNAMI shall consult in accordance with paragraph 4 of Article III of this Agreement concerning the prioritization of security tasks in support of UNAMI.

4. The UN shall take all necessary and appropriate steps to maintain, safeguard preserve, and enhance the security of all UN officials and personnel present in Iraq consistent with the tasks described herein.

5. It is envisioned that the Iraqi Security Forces ("ISF") will progressively assume responsibilities that are allocated to United States Forces under this Agreement. In so far as it may occur at the initiative of either of the Parties, this assumption of responsibility will occur at such time as the United States Forces authorities, in consultation and coordination with the Government of Iraq and UNAMI, determine that the ISF can provide such security and related services and the ISF agrees to do so. In the short term, it is anticipated that such assumption of responsibilities probably will occur on a case by case basis with respect to particular services at particular locations. In each case, the United States Forces shall assist UNAMI in assessing ISF readiness by facilitating visits by UNAMI to relevant ISF locations and by exchanging information in accordance with Article II.

6. For the purposes of this Agreement, "UN personnel" means:

a. the Special Representative of the Secretary-General for Iraq ("the SRSG"), officials of the United Nations assigned to serve with and persons assigned to perform missions for UNAMI in Iraq, and members of the United Nations Guard Unit established pursuant to the Security Council's decision of October 1, 2004; and

b. officials of, and experts performing missions for, the specialized agencies and related organizations and the offices, funds and programs of the United Nations who are deployed to Iraq under the coordination of the SRSG and UNAMI and who have been cleared to travel to Iraq for that purpose by the UN Under-Secretary-General for Safety and Security.

7. For the purposes of this Agreement, "United States Forces" means: the entity comprising the members of the United States Armed Forces, their associated civilian component, and all property, equipment and materiel of the United States Armed Forces present in the territory of Iraq.

Article II. Exchange of information

1. The Parties shall exchange in a timely manner information on the security situation in Iraq, including security assessments; updates and incident reports; maps of the location of minefields and unexploded ordnance; anticipated changes to their respective security plans that may affect the other Party; anticipated changes to the layout or cityscape of the area surrounding UNAMI premises; hazard identification and analysis; route-status, destinations-to-be-visited, and air-navigation status warnings; warnings of emergent threats; and threat analysis.

2. The Parties shall protect all classified or sensitive information that is provided by the other Party to it under this Agreement in accordance with the requirements of the providing Party so that it is given the equivalent level of protection as that given by the providing Party. UNAMI and the United States Forces are to jointly develop additional procedures for the communication, handling, dissemination, protection, storage, and destruction of such information.

Article III. Coordination and implementation

1. The United States Department of Defense (DoD) shall carry out the provisions of this Agreement on behalf of the USG, and UNAMI shall carry out the provisions of this

Agreement on behalf of the UN in close consultation and coordination with all appropriate levels.

2. United States Forces, on behalf of the United States, and UNAMI, on behalf of the UN, shall jointly develop non-legally binding supplemental arrangements, as may be appropriate, in implementation of this Agreement including, *inter alia*, determinations related to the parameters of the inner and middle rings; measures related to minimization of risks to UN personnel during United States Forces' operations, methods, modalities, and timing of notifications; and modalities related to the provision of temporary emergency evacuation services.

3. Nothing in this Agreement is intended to affect the authorities or privileges and immunities of the UN including UNAMI or the United States Forces, including as set forth in the UN Charter and other relevant agreements, including the Agreement Between the United Slates of America and the Republic of Iraq On the Withdrawal of United States Forces from Iraq and the Organization of Their Activities during Their Temporary Presence in Iraq (signed November 17 2008) ("U.S. – Iraq Security Agreement"). The Parties may address modalities for addressing these issues in such supplemental arrangements as may be developed under this Article.

4. The SRSG and the Commander of the United States Forces in Iraq, or their designated representatives, shall meet regularly and upon request to review, or resolve issues arising from, the implementation of this Agreement and any supplemental arrangements as may be developed under this Article. The Parties shall consult with each other without delay at the request of either Party on any difficulties or concerns that may arise in the implementation of this Agreement and any supplemental arrangements as may be developed under this Article.

5. Nothing in this Agreement derogates from the Parties' obligations related to reimbursement for services and commodities requested and received under the 607 Agreement. All services and commodities provided under this Agreement that are reimbursable under the 607 Agreement shall remain reimbursable in accordance with that Agreement.

6. Should it be decided that the ISF is to assume and the United States Forces are to relinquish any of the responsibilities provided for in this Agreement as envisioned in paragraph 5 of Article 1, including in respect of particular security services and particular locations only, the USG shall provide as much advance notice as possible to the UN of the plans concerned.

Article IV. Claims

The USG and the UN, including UNAMI, waive all claims they may have against each other for damage to, or loss or destruction of its property or injury or death to its personnel arising out of activities undertaken pursuant to this Agreement. Claims of third parties filed against the USG or the UN, including UNAMI, for damages or loss caused by their respective personnel and arising from activities under this Agreement shall be resolved by the Party against which such claims are filed in accordance with the laws, rules, and regulations applicable to that Party.

Article V. Settlement of Disputes

1. Any dispute arising under this Agreement and any supplemental arrangements developed under Article Ill of this Agreement shall be resolved at the lowest levels, if possible. Disputes that cannot be resolved at a lower level shall be forwarded to the appropriate authorities of the United States Forces and UNAMI for resolution.

2. In the event that there is continued disagreement between the Parties; consultations shall be continued through diplomatic channels. In no case shall any dispute arising under this Agreement and any supplemental arrangements developed under Article III of this Agreement be referred to a third party for resolution.

Article VI. Execution

1. It is understood that the United States Forces are present in Iraq upon the request of the Government of Iraq (GOI). The Parties agree the obligations of the USG, including the United States Forces, under Article 1 of this Agreement shall be subject to and conditioned upon the consent of the Government of Iraq.

2. The Permanent Representative of the United States to the United Nations shall immediately inform the Secretary-General of the United Nations in writing if:

a. the condition identified in paragraph 1 of this Article will not be met; or

b. the deployment of the United States Forces to Iraq is to be terminated or reduced to an extent that would preclude the United States Forces from performing the tasks described in this Agreement, in which case the Permanent Representative of the United States shall also notify the Secretary-General in writing of the date on which the United States Forces will cease to be able to perform the tasks provided for in this Agreement. That date shall be at least 90 days after the date of such notification, subject to the consent of the Government of Iraq.

Article VII. Entry into force, termination and amendment

1. This Agreement shall enter into force on January 1, 2009.

2. This Agreement shall terminate upon the occurrence of any of the following events: the U.S.-Iraq Security Agreement expires or is terminated; or written notification by the USG to the UN that the United States Forces relinquish and the ISF assumes all of the responsibilities of the United States Forces under Article I of this Agreement; or the Agreement is terminated by either Party upon 90 days written notice to the other Party or the USG determines that the deployment of United States Forces in Iraq is to be terminated or reduced to an extent that would preclude United States Forces from performing the tasks under this Agreement, in which last case the Agreement shall terminate on the date specified by the Permanent Representative of the United States in accordance with paragraph 2 (b) of Article VI of this Agreement

3. This Agreement may be amended by the written agreement of the Parties.

4. Notwithstanding the termination of this Agreement, the obligations of the Parties pursuant to paragraph 2 of Article II and Article IV that may arise before such termination shall continue to apply, unless otherwise agreed to in writing by the Parties.

Done at New York this 31 day of December 2008, in duplicate.

For the United Nations Organization	For the Government of the United States of America
[*Signed*] Jean Arnault	[*Signed*] Zalmay Khalilzad
Assistant Secretary-General for Political Affairs	Permanent Representative of the United States to the United Nations

(*b*) Exchange of Letters constituting an Agreement between the United Nations and the Government of the Republic of Uganda on the status of the proposed African Union-United Nations Hybrid Operation in Darfur (UNAMID) liaison office in Entebbe. Kampala, 23 January 2009*

I

23 January 2009

Excellency,

I have the honour to refer to the meeting that was held in Kampala on 23rd September, 2008, with my representatives concerning the establishment of a UNAMID Liaison Office in Entebbe, Uganda.

UNAMID's activities within the framework of its mandate have demonstrated a need for additional logistical arrangements to support the Mission from offices situated outside Darfur, Sudan. In this regard, I also have the honour to request the Government's assistance in establishing a Liaison Office in Entebbe.

To this end, the Government is also to facilitate the free, unhindered and expeditious movement to Uganda of all personnel, as well as equipment, provisions, supplies and other goods, including vehicles which will be for the exclusive use of the proposed UNAMID Liaison Office in Entebbe. It is proposed that the Republic of Uganda, pursuant its obligations under Article 105 of the Charter of the United Nations, extend to the proposed UNAMID Liaison Office, its property, funds and assets, and personnel and contractors providing services exclusively to UNAMID the privileges and immunities provided in the Convention on the Privileges and Immunities of the United Nations to which Uganda is a Party without reservation. The privileges and immunities necessary for the fulfillment of the functions of the proposed UNAMID Liaison Office include:

a. prompt issuance by the Government to personnel of UNAMID and its contractors, free of charge and without any restrictions of all necessary visas, licences or permits;

b. freedom of movement throughout the country of its personnel and contractors their property, equipment and means of transport, as appropriate. The Government undertakes to supply UNAMID with the necessary information in order to facilitate such movements;

c. the right to import, free of duty or other restrictions, vehicles, equipment, provisions, supplies and other goods which are for the exclusive and official use of UNAMID;

* Entered into force on 23 January 2009, in accordance with the provisions of the said letters

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

e. prompt issuance by the Government of all necessary authorizations, permits and licences for the importation or purchase of equipment, provisions, supplies, materials and other goods used in support of UNAMID, including in respect of importation or purchase by its contractors, free of any restrictions and without payment of duties, charges or taxes including value-added tax;

f. acceptance by the Government of permits or licences issued by UNAMID for the operation of vehicles in support of UNAMID;

g. acceptance by the Government, or where necessary validation by the Government, free of charge and without any restriction, of licences and certificates already issued by appropriate authorities in other States in respect of aircraft and vessels used in support of UNAMID;

h. prompt issuance by the Government, free of charge and without any restrictions, of necessary authorizations, licences and certificates, where required, for the acquisition, use, operation and maintenance of aircraft and vessels used in support of UNAMID;

i. the right to fly the United Nations and African Union flags and place distinctive identifications on premises, vehicles and aircraft used in support of UNAMID;

j. the right to unrestricted communication by radio, satellite or other forms of communication with the African Union and the United Nations Headquarters and between the various Offices and to connect with the United Nations radio and satellite network, as well as by telephone, facsimile and other electronic data systems. The frequencies on which the communication by radio will operate shall be decided upon in cooperation with the Government; and

k. the right to make arrangement through its own facilities for the processing and transport of private mail addressed to or emanating from the personnel and the contractors of UNAMID. The Government shall be informed of the nature of such arrangements, and shall not interfere with or apply censorship to the mail.

Finally, I have the honour to request that:

l. The Government assist UNAMID, to the extent possible, in obtaining for as long as required such areas and sites for premises or for the construction of premises as may be necessary for the conduct of the operational and administrative activities of UNAMID in the Republic of Uganda. Without prejudice to the fact that such premises and sites remain Ugandan territory, they shall be inviolable and subject to the exclusive control and authority of UNAMID.

m. Upon the request of the Head of UNAMID Liaison Office, the Government, within the means available to it provide such security as necessary to protect UNAMID, its property and personnel during the exercise of their functions. Also upon the request of the Head of the proposed UNAMID Liaison Office, the Government shall provide armed escorts to protect UNAMID personnel during the exercise of their functions and, as nec-

essary, protect the movement of UNAMID's stores, equipment, vehicles and other assets within Uganda.

n. UNAMID military personnel, civilian police personnel and security officers may wear their uniforms and standard UNAMID *accoutrements* while on official duty/travel through the Republic of Uganda. It is also understood that UNAMID military personnel, civilian police personnel and security officers designated by the Head of the proposed UNAMID Liaison Office may possess and carry arms while on duty in accordance with their orders. Subject to practical arrangements to be agreed between the Government and the Head of UNAMID Liaison Office, UNAMID and its military security personnel shall be permitted to transport their arms and ammunition through the Republic of Uganda.

o. Any dispute between UNAMID and the Government concerning the interpretation or application of these provisions, except for a dispute that is regulated by Section 30 of the Convention or Section 32 of the Convention on the Privileges and Immunities of the Specialized Agencies, shall be resolved by negotiations or other agreed mode of settlement. Any such dispute that is not settled by negotiation or any other agreed mode of settlement shall be submitted at the request of either Party for final decision to a tribunal of three arbitrators, one of whom shall be appointed by the Secretary-General of the United Nations, or by the Government and the third, who shall be Chairman, by the other two arbitrators. If either Party does not appoint an arbitrator within three months of the appointment by the other Party of its arbitrator, or if the first two arbitrators do not, within three months of the appointment of the second one of them, appoint the Chairman, then such arbitrator shall be appointed by the President of the International Court of Justice at the request of either Party to the dispute. Except as otherwise agreed by the Parties, the tribunal shall adopt its own rules of procedure, provide for the reimbursement of its members and the distribution of expenses between the Parties and take all decisions by a two-thirds majority. Its decisions on all questions of procedure and substance shall be final and, even if rendered in default of one of the Parties, be binding on both of them.

The Head of the UNAMID Liaison Office shall take all appropriate measures to ensure that UNAMID members 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, and to respect all local laws and regulations.

If the above provisions meet with your approval, I would propose that this letter and your reply thereto constitute an Agreement between UNAMID and the Republic of Uganda on the status of the proposed UNAMID Liaison Office in Entebbe with immediate effect.

I would like to take this opportunity to express my sincere gratitude to you and to the Government of the Republic of Uganda for the support extended to UNAMID to facilitate the achievements of its mandate.

Accept, Excellency, the assurances of my highest consideration.

[*Signed*] Rodolphe Adada
Joint Special Representative
UNAMID

II

21 January 2009

Excellency,

I have the honour to acknowledge receipt of yours in which you wrote:

[*See letter I*]

Excellency, it is my pleasure to inform you that the Government of the Republic of Uganda accepts the terms contained in the above quoted proposal you submitted and by these presents, confirms the conclusion of a Memorandum of Understanding for the establishment of a UNAMID Liaison Office at Entebbe, Uganda.

Please accept, Excellency, the assurances of my highest considerations and esteem.

[*Signed*] Sam K. Kutesa
Minister of Foreign Affairs

(*c*) Agreement between the United Nations and the Kingdom of Spain regarding the use by the United Nations of premises in the Kingdom of Spain for the support of United Nations peacekeeping and related operations. Madrid, 28 January 2009*

Article I. Definitions

For the purposes of this Agreement, the following definitions shall apply:

(*a*) "Spain" means the Kingdom of Spain;

(*b*) "the United Nations" means the international organization established under the Charter of the United Nations;

(*c*) "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 Spain became a party on 31 July 1974;

(*d*) "the Secretary-General" means the Secretary-General of the United Nations, or his or her authorized representative;

(*e*) "appropriate authorities" means such national or local authorities in Spain as may be appropriate in the context and in accordance with the laws and customs applicable in Spain;

(*f*) the "Premises" means any land, buildings, structures, and related facilities which the appropriate authorities make available to the United Nations for its exclusive use;

(*g*) "peacekeeping and related operations" means operations established by the competent organs of the United Nations in accordance with the Charter of the United Nations and conducted under United Nations authority and control for the purpose of (i) maintaining or restoring international peace and security; or (ii) delivering humanitarian, political

* Entered into force provisionally on 28 January 2009 by signature, in accordance with article XXIX.

or development assistance in peacebuilding; or (iii) delivering emergency humanitarian assistance;

(*h*) "contributing State" means a Member State of the United Nations contributing property, funds and assets to the United Nations for its use in peacekeeping and related operations;

(*i*) "officials" means officials of the United Nations who fall within Article V of the Convention;

(*j*) "experts on mission" means persons, other than officials, who come within the scope of Article VI of the Convention;

(*k*) "members of the family forming part of the household" means (i) the spouses or registered partners of officials or (ii) children of officials who are under 18 years of age, or children under 23 years of age who are in full-time education and economically dependent, or children of any age who are dependent due to disability;

(*l*) "United Nations personnel" means officials, experts on mission, and local personnel assigned to hourly rates;

(*m*) "Parties" means the Kingdom of Spain and the United Nations.

Article II. Purpose of the Agreement

1. The purpose of this Agreement is to regulate the legal status in Spain of Premises made available to the United Nations for its use in providing support to United Nations peacekeeping and related operations and under which the United Nations shall use such Premises, as well as the legal status of United Nations personnel assigned to Premises.

2. Additional terms and conditions applicable to the use of Premises shall be set forth in supplemental agreements (hereinafter "Administrative Agreements") to be entered into in accordance with Article III of this Agreement.

Article III. Administrative Agreement

1. An Administrative Agreement, supplemental to this Agreement, shall be concluded by the United Nations and the appropriate authorities of Spain when the appropriate authorities make available Premises to the United Nations.

2. The Administrative Agreement shall set forth a description of the Premises and any rights, easements, appurtenances and other facilities ancillary to the Premises. The Administrative Agreement shall also set forth such arrangements as may be agreed between the appropriate authorities and the United Nations concerning their mutual obligations in respect of the Premises. In particular, the Administrative Agreement shall provide that the Premises shall be made available to the United Nations free of charge. The Administrative Agreement shall also provide that the United Nations shall not be required to make payment towards, reimburse or otherwise share in, the appropriate authorities' normal costs of providing any services, facilities, equipment, personnel or other requirements for effective maintenance and operation of the Premises. However, the United Nations may, in accordance with terms and conditions set forth in the Administrative Agreement, reimburse the relevant appropriate authorities for any costs incurred that are in excess of the appropriate authorities' normal costs and which are directly attributable to the United Nations' use of the Premises.

Article IV. Application of the Convention

1. The United Nations, its property, funds and assets, wherever located and by whomsoever held, including equipment and materials leased, chartered or otherwise made available to the United Nations for its peacekeeping and related operations, as well as United Nations personnel shall enjoy the privileges, immunities, exemptions and facilities specified in the present Agreement, as well as those provided for in the Convention and any other applicable agreement.

2. Article II of the Convention shall also apply to the property, funds and assets of contributing States used in connection with United Nations peacekeeping and related operations.

Article V. Premises

1. The Premises shall be for the exclusive use of the United Nations and shall be clearly physically delimited on the ground.

2. The Premises shall not be used in any manner incompatible with the purpose of this Agreement.

Article VI. Inviolability of Premises

1. The Premises shall be inviolable and subject to the exclusive control and authority of the United Nations.

2. No officer of Spain, or other person exercising any public authority in Spain, shall enter the Premises to perform any duties therein except with the consent of, and under conditions approved by the official of the United Nations assigned to head the activities of the United Nations at the Premises. The United Nations' consent to such entry shall be presumed in the event of fire or other analogous emergency requiring urgent action if the official of the United Nations assigned to head the activities of the United Nations at the Premises, or his or her representative, cannot be contacted in time.

3. Any person who has entered the Premises with the presumed consent of the United Nations, shall, if so requested by the United Nations, leave the Premises immediately. Without prejudice to the provisions of the Convention and Agreement, the United Nations shall prevent the Premises from being used as a refuge by persons who are required by the appropriate authorities for arrest.

4. The property, funds and assets of the United Nations, including equipment and materials leased, chartered or otherwise made available to the United Nations for its peacekeeping and related operations, wherever located and by whomsoever held, shall be immune from search, seizure, requisition, confiscation, expropriation and any other form of interference, whether by executive, administrative, judicial or legislative action.

Article VII. Goods, services and facilities

1. The United Nations shall have the right to import and export, free of any customs duties, taxes, fees and charges, and free of any other prohibitions and restrictions, equipment, provisions, supplies, fuel and other goods, including means of transport and spare

parts, which are for the exclusive and official use of the United Nations or for resale in the commissary provided for in paragraph 4 below.

2. Spain shall grant promptly, upon presentation by the United Nations of a bill of lading, airway bill, cargo manifest or packing list, all necessary authorizations, permits and licenses required for the import by the United Nations of equipment, provisions, supplies, fuel, materials and other goods, including spare parts and means of transport, for the exclusive and official use of the United Nations, free of prohibitions and restrictions and without payment of monetary contributions or duties, fees, charges or taxes, including value added tax. Spain likewise shall grant promptly all necessary authorizations, permits and licenses required for the purchase or export of such goods free of any prohibitions and restrictions and without the payment of monetary contributions, duties, fees, charges or taxes.

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

4. The United Nations shall have the right to establish, maintain and operate a commissary at the Premises for the benefit of officials and experts on mission, but not of locally recruited personnel. Such commissary may sell goods of a consumable nature and other articles as approved by the United Nations. The United Nations shall take all necessary measures to prevent abuse of such commissary and the sale or resale of such goods to persons other than officials and experts on mission, and shall give sympathetic consideration to observations or requests from the appropriate authorities concerning the operation of the commissary.

Article VIII. Exemption from taxation, duties, prohibitions and restrictions

1. The United Nations, its property, funds and assets, wherever located and by whomsoever held, shall be exempt from all direct and all indirect taxation. Without prejudice to the generality of the foregoing:

(*a*) The United Nations shall be exempt from consumer tax and related surcharges on electricity, methane gas and any type of fuel consumed for official use. In addition, no such taxes or related surcharges shall be levied on charges for public services provided to the United Nations pursuant to Article X below;

(*b*) The United Nations shall be exempt from customs duties, vehicle ownership tax and any other duties on motor vehicles including spare parts therefore, required for official use in Spain, whether such vehicles be imported or purchased in Spain. Such vehicles shall be registered in accordance with applicable Spanish laws and regulations. The United Nations may dispose freely of such vehicles one year after their importation, without any prohibition, restriction, customs duties or other levies. Notwithstanding the preceding, such vehicles may be disposed of at an earlier date, subject to authorization by the appropriate Spanish authorities.

(*c*) Fuel and lubricants, for United Nations' official use and activities, may be imported, exported or purchased in Spain free of customs duties, and all taxes, prohibitions and restrictions.

2. In respect of equipment, provisions, supplies, fuel, materials and other goods and services purchased in Spain, or otherwise imported into Spain for the official and exclusive use of the United Nations, Spain shall make appropriate administrative arrangements for the remission of any excise, tax, or monetary contribution payable as part of the price, including value added tax (VAT).

3. The exemptions and facilities stipulated in this Article shall not apply to charges for public services rendered to the United Nations, it being understood that such charges shall be at the rates duly established by the appropriate authorities and that these charges shall be specifically described, identified and itemized at a predetermined rate.

Article IX. United Nations flag, emblem and markings

1. The United Nations shall have the right to display its flag and emblem on the Premises, buildings located thereon, and on its vehicles, vessels and aircraft.

2. Vehicles, vessels and aircraft of the United Nations shall carry a distinctive United Nations identification, which shall be notified to the appropriate authorities.

Article X. Public services and facilities

1. The appropriate authorities shall secure, on fair conditions and upon request of the United Nations, the public services needed by the Premises such as, but not limited to, postal, telephone and telegraphic services, electricity, water, gas, sewerage, drainage, collection of waste, fire protection, local transportation and cleaning of public streets.

2. In cases where electricity, water, gas or other services referred to in paragraph 1 above are made available to the Premises by the appropriate authorities, or where the prices thereof are under their control, the rates for such services shall not exceed the lowest comparable rates accorded to Government departments of Spain.

3. In the case of interruption or threatened interruption of service, Spain shall give the same priority to the needs of the United Nations as to its public administration.

4. The United Nations shall be responsible for making suitable arrangements for duly authorized persons representing the appropriate public service entities to install, inspect, repair, maintain, reconstruct, and relocate utilities, conduits, mains and sewers within the Premises under such conditions and in a manner which shall not unreasonably disturb the carrying out of functions of the United Nations.

Article XI. Communications

1. The United Nations shall enjoy the facilities in respect of communications provided 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.

2. In addition to the provisions of paragraph 1 above:

(*a*) The United Nations shall have the authority to install and operate within the Premises radio sending, receiving and repeater stations as well as satellite systems to connect appropriate points in Spain with each other and with appropriate points in other countries, and to store and exchange telephone, voice, facsimile, video and other electronic

data with the United Nations global telecommunications network and with and between the Specialized Agencies of the United Nations, other related organizations, and any other bodies as appropriate. Such telecommunications services shall be operated in accordance with the International Telecommunications Convention and Regulations.

(*b*) The United Nations shall enjoy, in Spain, 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 the Premises, including the laying of cables and land lines and the establishment of fixed and mobile radio sending, receiving and repeater stations. Use of those local systems by the United Nations shall be charged at the most favourable rate.

(*c*) The frequencies on which the services referred to in paragraphs (a) and (b) above may operate shall be decided upon in cooperation with the appropriate Spanish authorities and shall be allocated expeditiously by the appropriate authorities. The United Nations 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.

(*d*) The United Nations shall have the right to use codes and to dispatch and receive its correspondence by courier or in bags, which shall have the same privileges and immunities as diplomatic couriers and bags.

Article XII. Funds, assets and other property

1. Without being restricted by financial controls, regulations or moratoria of any kind, for official purposes the United Nations:

(*a*) may hold funds or currency of any kind and operate accounts in any currency;

(*b*) shall be free to transfer its funds or currency from Spain to another country or within Spain and to convert any currency held by it into any other currency.

2. In exercising its rights under the above provision, the United Nations shall pay due regard to any representations made by Spain in so far as it is considered that effect can be given to such representations without detriment to the United Nations' interests.

Article XIII. Security and safety

1. Spain shall take effective and adequate action as may be required to ensure the security, safety and protection of United Nations personnel and visitors at the Premises in Spain. Spain shall ensure that the provisions of the Convention on the Safety of United Nations and Associated Personnel, to which Spain is a party, are applied to and in respect of United Nations personnel and visitors at the Premises, as well as their respective property and equipment.

2. Spain shall ensure the security and protection of the Premises and shall exercise due diligence to ensure that the tranquillity of the Premises is not disturbed by any person or group of persons attempting unauthorized entry into, or creating a disturbance in the vicinity of the Premises.

3. If so requested by the official of the United Nations assigned to head the activities of the United Nations on the Premises, the appropriate authorities shall provide assistance as necessary for the preservation of law and order on the Premises and for the removal of

any person or persons from the Premises as requested by the official of the United Nations referred to in this paragraph.

4. Spain shall ensure that in responding to any security alert or other emergency at the Premises, the appropriate authorities shall afford the same priority to the needs of the Premises as is provided to government and diplomatic missions accredited to Spain.

5. The United Nations shall consult with Spain as to methods to ensure the security of the Premises and the safety of United Nations personnel, and visitors to the Premises. In this respect, it is understood that the external security of the Premises shall be the responsibility of Spain. The internal security of the Premises shall be the responsibility of the United Nations. Specific provisions concerning the security arrangements with respect to particular Premises, including, as necessary, the construction and improvement of the external perimeter fences or barriers around the Premises, or in the vicinity of the Premises shall be set forth in the Administrative Agreement.

6. United Nations Security Officers may wear United Nations uniform at the Premises. 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 when serving as close protection officers. All necessary permits to possess and carry firearms in Spain must be obtained through the Protocol Department of the Spanish Ministry of Foreign Affairs and Cooperation. Requests for such permits by the United Nations shall be considered favourably and provided in an expeditious manner.

Article XIV. Travel and transport

1. The United Nations, together with its vehicles, vessels, aircraft and equipment whether owned, leased, chartered or otherwise made available to the United Nations, shall enjoy freedom of movement throughout Spain. That freedom of movement shall, with respect to dangerous cargo, oversized vehicles and large movements of stores or vehicles through airports or on railways or roads used for general traffic within Spain, be coordinated with Spain. Spain undertakes to supply the United Nations, where necessary and free of charge, with maps and other information which may be useful in facilitating its movements.

2. The United Nations, as well as its vehicles, vessels and aircraft, may use roads, bridges, canals and other waters, port facilities and airfields without the payment of any taxes, dues, tolls, fees or charges in accordance with the Convention. However, the United Nations will not claim exemption from charges which are in fact public utility charges for services rendered, subject to their being applied at the rates duly established by the appropriate authorities and provided that such charges shall be specifically described, identified and itemized at a predetermined rate. Charges for services rendered shall be levied at the most favourable rate as accorded by Spain to state vessels and aircraft.

3. Spain shall not collect any airport, departure or passenger tax from any persons travelling for official United Nations purposes on aircraft and vessels referred to in this Agreement.

Article XV. Permits and licenses

Spain agrees to accept as valid, without tax or fee, a permit or license issued by the United Nations for the operation of any transport or communications equipment and for the practice of any profession or occupation in connection with the United Nations peacekeeping and related operations, provided that no license to drive a vehicle or pilot an aircraft or vessel shall be issued to any person who is not already in possession of an appropriate and valid license.

Article XVI. Privileges and immunities

1. Subject to paragraph 4 below, officials shall enjoy in Spain the following privileges, immunities, exemptions and facilities:

(*a*) Immunity from legal process in respect of words spoken and written and all acts performed by them in their official capacity. Such immunity from legal process shall continue to be accorded after the persons concerned are no longer employed by the United Nations;

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

(*c*) Exemption from taxation in respect of the salaries, emoluments and indemnities paid to them by the United Nations and from having such exempt income being taken into account for the purpose of assessing the amount of taxation on other income;

(*d*) Exemption from taxation on all income and property for themselves and for members of the family forming part of the household, insofar as such income derives from sources, or insofar as such property is located, outside of Spain;

(*e*) Exemption from inheritance and gift taxes, except with respect to immovable property located in Spain, insofar as the obligation to pay such taxes arises solely from the fact that the officials and members of the family forming part of the household are resident in Spain;

(*f*) Exemption from vehicles tax as well as special tax on fuel;

(*g*) Freedom to acquire or maintain within Spain or elsewhere foreign securities, foreign currency accounts, and other movable and, under the same conditions applicable to Spanish nationals, immovable property; and at the termination of their assignment with the United Nations in Spain, the right to take out of Spain, through authorized channels without prohibition or restriction, their finds in the same currency and up to the same amounts as they had brought into Spain;

(*h*) Exemption from any military service obligations or any other national service in Spain;

(*i*) Exemption, for themselves and for members of the family forming part of the household, from immigration restrictions and alien registration. Visas or entry permits, where required, shall be granted to officials, their dependents and persons invited to the Premises in connection with the official work and activities of the United Nations as promptly as possible and without charge;

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

(*k*) Officials, together with members of the family forming part of the household, shall be given the same repatriation facilities in time of international crisis as diplomatic envoys;

(*l*) If they have previously been residing abroad, the right to import their furniture, personal effects and all household appliances in their possession intended for personal use, free of duty, when they are assigned to Premises.

(*m*) The right to purchase and import for personal use, free of customs duties, taxes and other levies, prohibitions and restrictions, automobiles for personal use and articles for personal consumption in accordance with the scheme of exemptions as agreed between the United Nations and Spain, which scheme shall be no less favourable than that accorded to diplomatic missions, consular offices and international organizations in Spain. Automobiles imported under the provisions of this Article may be sold in Spain in accordance with the said scheme of exemptions referred to above. Officials shall also be entitled, on the termination of their official functions in Spain, to export their furniture and personal effects, including automobiles, without duties, taxes, levies and restrictions.

2. In addition to the privileges and immunities set forth under paragraph I above, officials having the professional grade of P-5 and above shall be accorded the same privileges, immunities, exemptions and facilities accorded by Spain to members of comparable rank of the diplomatic corps in Spain.

3. Members of the family forming part of the household of officials shall be entitled to take up gainful employment in Spain for the duration of the officials' assignment in Spain. The request of authorization to take up a particular gainful employment in Spain shall be addressed by the official of the United Nations assigned to head the activities of the United Nations at the Premises to the Spanish Ministry of Foreign Affairs and Cooperation. The authorization can be refused when the employment is reserved to Spanish nationals because of reasons of security, exercise of public power or safeguard of the interest of the State. The privileges and immunities set forth in this Agreement shall not apply with respect to such employment.

4. Officials of Spanish nationality or with permanent resident status in Spain shall enjoy only those privileges and immunities, exemptions and facilities referred to in Articles V and VII of the Convention.

5. Experts on mission, as notified to Spain by the official of the United Nations assigned to head the activities of the United Nations on the Premises, shall be granted visas or entry permits as promptly as possible and without charge for the duration of their mission with the United Nations.

Article XVII. Head of Premises

1. Without prejudice to the provisions of Article XVI, the official of the United Nations assigned to head the activities of the United Nations on the Premises, if having a professional grade of P-5 or higher, shall enjoy, during his/her residence in Spain, the privileges and immunities and facilities granted to heads of diplomatic missions accredited to Spain. The name of the official assigned to head the activities of the United Nations on the Premises shall be included in the diplomatic list.

2. The privileges, immunities arid facilities referred to in paragraph I above shall also be accorded to the members of the family forming part of the household of the official assigned to head the activities of the United Nations on the Premises provided that they do not have Spanish nationality or permanent resident status in Spain.

Article XVIII. Experts on mission

1. Experts on mission shall be accorded the privileges, immunities, exemptions and facilities as set forth in Articles VI and VII of the Convention.

2. Experts on mission, other than those of Spanish nationality or with permanent resident status in Spain, shall be granted exemption from taxation on the salaries and other emoluments paid to them by the United Nations, and may be accorded such additional privileges, immunities, exemptions and facilities as may be agreed upon between the Parties.

Article XIX. Local personnel assigned to hourly rates

Personnel recruited locally and assigned to hourly rates shall be accorded immunity from legal process in respect of words spoken or written and all acts performed by them in their official capacity. Such immunity shall continue to be accorded notwithstanding that the persons concerned are no longer employed by the United Nations. They shall also be accorded such other facilities as may be necessary for the independent exercise of their official functions.

Article XX. Waiver of immunity

1. Privileges and immunities referred to in Articles XVI, XVII, XVIII and XIX above are granted to United Nations personnel in the interests of the United Nations and not for the personal benefit of the individuals themselves.

2. The Secretary-General shall have the right and duty to waive the immunity of these persons 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.

Article XXI. Respect for local laws and regulations and cooperation with the appropriate authorities

1. Without prejudice to their privileges and immunities, it is the duty of all persons enjoying such privileges and immunities to respect the laws and regulations of the host country. They also have a duty not to interfere in the internal affairs of Spain. The official of the United Nations assigned to head the activities of the United Nations at the Premises shall take all appropriate measures to ensure the observance of these obligations.

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

Article XXII. Investigations

1. All accidents or incidents that occur on the Premises shall be investigated by the United Nations.

2. All accidents or incidents that occur outside the Premises and involve United Nations officials, members of the family forming part of the household, experts on mission, or United Nations property, shall immediately be reported to the official of the United Nations assigned to head the activities of the United Nations at the Premises and the appropriate authorities. Following the investigation of such accident or incident, the official of the United Nations assigned to head the activities of the United Nations at the Premises and the appropriate authorities shall consult on the appropriate action to be taken.

3. Any action taken pursuant to paragraphs 1 and 2 above shall be without prejudice to the Convention, this Agreement and the competence of the Spanish courts.

Article XXIII. Entry, residence and departure

The United Nations official assigned to head the activities of the United Nations at the Premises, officials, as well as members of the family forming part of the household, and experts on mission, shall have the right to enter into, reside in, travel freely within, and depart from Spain during the period of their assignment in Spain. Spain undertakes to facilitate their entry into and departure from Spain without charge and as promptly as possible.

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

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

2. In accordance with Section 26 of the Convention, similar facilities to those specified in Section 25 of the Convention shall be accorded to experts on mission and other persons who, though not the holders of United Nations *laissez-passer*, have a certificate that they are travelling on the business of the United Nations.

Article XXV. Identification cards

1. The United Nations shall issue all United Nations personnel an identification card showing full name, title, and photograph.

2. The individuals referred to in paragraph 1 above shall be required to present, but not to surrender, their United Nations identity cards upon request by appropriate authorities.

3. Spain shall issue the individuals referred to in paragraph I above with identity cards.

4. The United Nations shall inform the appropriate authorities whenever an official takes up or completes his or her assignment. It shall, at least once every year, send Spain a list of the officials and the members of their families forming part of their households.

Article XXVI. Social security

1. Officials are subject to the United Nations Staff Regulations and Rules including Article VI thereof which sets forth provisions concerning participation in the United Nations Joint Staff Pension Fund, health protection, sick leave and maternity leave, and a workers' compensation scheme in the event of illness, accident or death attributable to the performance of official duties on behalf of the United Nations. Accordingly, the Parties agree that the United Nations officials, irrespective of nationality or residency status, shall be exempt from all compulsory contributions to the social security schemes of Spain during their employment with the United Nations.

2. The United Nations agrees that officials, irrespective of nationality or residency status, shall, under conditions established by the Secretary-General, be required to participate in a medical insurance scheme established by the United Nations. Family members and dependants recognized under the applicable provisions of the United Nations Staff Regulations and Rules are eligible to be covered under the aforementioned medical scheme.

Article XXVII. Responsibility and insurance

1. Without prejudice to the Convention and this Agreement and any other applicable agreement, the United Nations shall insure or self-insure to cover its possible liabilities towards third parties arising out of its occupation and use of the Premises.

2. United Nations vehicles and aircraft shall carry third party insurance. The foregoing provision of this paragraph shall not apply to United Nations vehicles and aircraft which are stored on the Premises. In the event, however, stored vehicles or aircraft are operated in Spain outside of the Premises, they shall also carry third party insurance.

Article XXVIII. Settlement of disputes

1. In accordance with Article VIII, Section 29, of the Convention, the United Nations shall make provisions for appropriate modes of settlement of (a) disputes arising out of contracts or other disputes of a private law character to which the United Nations is a party; and (b) disputes involving any official or expert on mission who by reason of his/her official position enjoys immunity, if immunity has not been waived by the Secretary-General

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

accepted by the Parties as the final adjudication of the dispute, even if rendered in default of one of the Parties.

Article XXIX. Final provisions

1. Spain shall cooperate with the United Nations at all times with a view to assisting the United Nations in the fulfilment of its purposes and the discharge of its functions under the present Agreement and any supplemental agreements thereto.

2. If Spain enters into any agreement with an intergovernmental organization containing terms and conditions more favourable than those extended to the United Nations under the present Agreement, Spain shall give favourable consideration to extending such terms and conditions to the United Nations at its request. Such terms and conditions shall be set forth in such an appropriate form as may be agreed between the Parties, in accordance with their internal legal requirements.

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

4. This Agreement may be terminated by either Party providing thirty-six (36) months prior notice in writing. In the event of such termination, the provisions of this Agreement shall remain in force for such additional period as might be necessary for the resolution of any dispute between the Parties.

5. The present Agreement shall be without prejudice to the privileges and immunities of the United Nations as set forth in the Convention.

6. The provisions of this Agreement shall be applied provisionally as from the date of signature.

7. This Agreement, and any amendments thereto, shall enter into force on the day following the date of receipt of the last of the notifications by which the Parties will have informed each other of the completion of their respective formal requirements, in accordance with their internal legal requirements.

In witness whereof the undersigned, duly authorized representatives of the United Nations and the Kingdom of Spain have, on behalf of the Parties, signed the present Agreement.

Done at Madrid, this twenty-eighth day of January 2009, in duplicate in the English and Spanish languages, both texts being equally authentic.

For the Kingdom of Spain	For the United Nations
[*Signed*]	[*Signed*]
Maria Teresa Fernandez de la Vega First Vice-President the Government	Ban Ki-moon Secretary-General of the United Nations

(*d*) Agreement between the United Nations and the Government of Qatar regarding the arrangement for the Third Session of the Conference of the States Parties to the United Nations Convention against Corruption. Vienna, 16 April 2009*

Preamble

Whereas, the United Nations Convention against Corruption entered into force on 14 December 2005,

Whereas, pursuant to article 63 of the United Nations Convention against Corruption, a Conference of the States Parties to the Convention was established to improve the capacity of and cooperation between States Parties to achieve the objectives set forth in this Convention and to promote and review its implementation,

Whereas, the General Assembly in its resolution 47/202 of 22 December 1992, in operative paragraph 17, reaffirmed that United Nations bodies might hold sessions away from their established headquarters when the Government issuing the invitation for a session to be held within its territory agreed to defray, after consultations with the Secretary-General of the United Nations as to their nature and possible extent the actual additional cost directly or indirectly incurred, taking fully into account the Guidelines for the Preparation of Host Agreement Falling Under General Assembly Resolution 40/243, as well as resolution 47/202 of December 1992,

Now therefore, the United Nations and the Government of Qatar (hereinafter referred to as the "Government") do hereby agree as follows:

Article I. Date and place of the Conference

The Conference shall be held in Doha, Qatar, at the Conference Center supplement of Doha Sheraton Hotel and Resort, from 9 to 13 November 2009.

Article II. Participation in the Conference

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

(*a*) Member States of the United Nations;

(*b*) Entities and organizations which have received a standing invitation from the General Assembly to participate in the sessions and work of all international conferences convened under its auspices, in accordance with General Assembly resolutions 3237 (XXIX), 3280 (XXIX) and 31/152;

(*c*) Organs of the United Nations;

(*d*) Specialized agencies of the United Nations and the International Atomic Energy Agency;

(*e*) Intergovernmental organizations;

(*f*) Non-governmental organizations, with due regard to the provisions of the Rules of Procedure of the Conference of the States Parties to the United Nations Convention

* Entered into force provisionally on 16 April 2009 by signature, in accordance with article XIV.

against Corruption and section VII of Economic and Social Council resolution 1996/31 of 25 July 1996 and in particular to the relevance of their activities to the work of the Conference;

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

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

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

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

5. The Secretary of the Conference shall furnish the Government with name lists of the organizations and persons referred to in paragraph 1 of this Article, on the basis of information received by him, in due time before the opening of the Conference, on the understanding that such lists may not necessarily be exhaustive to ensure that the right of participation is not prejudiced.

Article III. Premises, equipment, utilities and supplies

1. The Government shall provide at its own expense, for as long as required for the Conference, the necessary premises, including conference rooms for formal and informal meetings, for the side events, delegates' and interpreters' lounges, suitable office space, storage areas, adequate space for the organization of exhibitions, and other related facilities as specified in the relevant Annexes (I-V).

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

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

4. The Government shall at its own expense furnish, equip and maintain such equipment as facsimiles, photocopying machines, personal computers with keyboards in the languages needed, word processors and printers and such other equipment and office supplies as is necessary for the effective conduct of the Conference and for use by press representatives covering the Conference.

5. The Government shall provide adequate supplies for producing the documentation of the Conference in the Conference Center supplement of Doha Sheraton Hotel and Resort, as required, and the United Nations shall reimburse the Government for the cost

of such supplies in an amount not to exceed the cost that would have been incurred by the United Nations for a similar quantity of supplies had the Conference been held at Headquarters (UNOV).

6. The Government shall install at its own expense, within the Conference area, a registration desk, a bank, a post office, telephone, facsimile, electronic mail, computer/Internet and cable facilities and information and travel facilities, as well as a secretarial service centre, equipped in consultation with the United Nations, for the use of delegations to the Conference on a commercial basis.

7. The Government shall install at its own expense, within the Conference area, or ensure the availability, at close proximity to the Conference area, as appropriate, restaurant facilities for the use of delegations to the Conference.

8. The Government shall install at its own expense facilities for written press coverage, film coverage, radio and television broadcasting of the proceedings, to the extent required by the United Nations.

9. In addition to the press, film, radio and television broadcasting facilities mentioned in paragraph 8 above, the Government shall provide, at its own expense, a press working area; a briefing room for correspondents; radio and television studios and areas for interviews and program preparation.

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

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

Article IV. Medical facilities

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

2. For serious emergencies, the Government shall ensure immediate transportation and admission to a hospital. Each participant shall be responsible for covering his/her medical expenses.

Article V. Accommodation

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

Article VI. Transportation

1. The Government shall provide transportation between Doha International Airport and the Conference area and main hotels for the members of the United Nations Secretariat servicing the Conference upon their arrival and departure.

2. The Government shall ensure the availability of transport for all participants and those attending the Conference between Doha International Airport, main hotels and Conference area.

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

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

Article VII. Police protection

The Government shall furnish, at its own expense, such police protection as is required to ensure the effective functioning of the Conference in an atmosphere of security and tranquility, free from interference of any kind. Such police services shall be under the direct supervision and control of a senior security officer provided by the Government and will assume the security of the areas adjacent to the Conference premises. Access to, and security of, the Conference premises and grounds shall be under the direct responsibility of a designated senior official of the United Nations Department of Safety and Security (UNDSS) who will work in close cooperation with the senior security officer provided by the Government.

Article VIII. Local personnel for the Conference

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

2. The Government, based on the exact requirements established by the United Nations in consultation with Government officials, shall engage and provide at its own expense an adequate number of technical personnel required, in addition to the United Nations staff, to:

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

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

(*c*) work as secretaries, typists, clerks, messengers, conference room ushers, drivers, and the like;

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

3. The Government shall arrange, at the request of the Secretary of the Conference, for some of the local staff referred to in paragraph 2 above, to be available before, during and after the closing of the Conference, including availability for night-time services, 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 resolutions 40/243 of 18 December 1985 and 47/202 of 22 December 1992, bear the actual additional costs directly or indirectly involved in holding the Conference in Qatar rather than at the United Nations Office at Vienna. Such costs, which are provisionally estimated at US$ 737,533.00 shall include, but not be restricted to, the actual additional costs of travel and of staff entitlements of the United Nations staff assigned by the Secretary-General of the United Nations to plan for or service the Conference, as well as the costs of shipment of necessary equipment and supplies. Arrangements for such travel and shipment shall be made by the United Nations Secretariat in accordance with the Staff Regulations and Rules of the United Nations and its related administrative practices in regard to travel standards, baggage allowance, subsistence payments (*per diem*) and terminal expenses.

2. The Government shall, upon the signature of this Agreement, deposit with the United Nations the sum of US$ 737,533.00, representing the total estimated costs referred to in paragraph 1 above.

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

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

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

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

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

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

2. The Government shall indemnify and hold harmless the United Nations and its officials in respect of any such action, claim and other demand, except where the United Nations and the Government agree that such action, claim or other demand was caused by the gross negligence or willful misconduct of the United Nations or its officials.

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

Article XI. Privileges and immunities

1. The Convention on the Privileges and Immunities of the United Nations, adopted by the General Assembly on 13 February 1946, to which Qatar acceded on 26 September 2007, shall be applicable in respect to the Conference. In particular, the representatives of States referred to in article II, paragraph I (a) above, shall enjoy the privileges and immunities provided under article IV of the Convention, the officials of the United Nations performing functions in connection with the Conference referred to in article II, paragraphs I (g) and 2 above, shall enjoy the privileges and immunities provided under articles V and VII of the Convention.

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

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

4. The privileges and immunities provided in the 1947 Convention on the Privileges and Immunities of the Specialized Agencies shall apply, *mutatis mutandis*, to the representatives of the specialized or related agencies referred to in article II, paragraph 1 (d) above.

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

6. All persons referred to in Article II shall have the right of unimpeded entry into and exit from Qatar, and no impediment shall be imposed on their transit to and from the Conference area. They shall be granted facilities for travel and visas and entry permits, where required, shall be granted free of charge, as speedily as possible and no later than two weeks before the date of the opening of the Conference. If the application for the visa is

not made at least two-and-a-half weeks before the opening of the Conference, the visa shall be granted no later than three days from the receipt of the application. Arrangements shall also be made to ensure that visas for the duration of the Conference are issued, where possible, at the airport of arrival to those who were unable to obtain them prior to their arrival. Exit permits, where required, shall be granted free of charge, as speedily as possible, and in any case not later than three days before the closing of the Conference.

7. For the purpose of the application of the Convention on the Privileges and Immunities of the United Nations, the Conference premises specified in Article I above shall be deemed to constitute premises of the United Nations and access thereto shall be under the control and authority of the United Nations. The premises shall be inviolable for the duration of the Conference, including the preparatory stage and winding-up. Distinguished guests officially invited to the Conference by the Government shall be given access to the Conference area by the United Nations.

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

Article XII. Import duties and tax

The Government shall allow the temporary importation, tax-free and duty-free, of all equipment and items, including technical equipment accompanying participants and representatives of information media, and shall waive import duties and taxes on supplies and materials necessary for the Conference. The Government shall issue without delay to the United Nations any necessary import and export permits for this purpose. No articles imported under this exemption may be sold, hired or lent out otherwise disposed of in Qatar except under conditions agreed with the Government.

Article XIII. Settlement of disputes

Any dispute between the United Nations and the Government concerning the interpretation or implementation of the present Agreement that is not resolved by negotiation or other agreed mode of settlement shall be referred at the request of either Party for final decision to a tribunal of three arbitrators, one to be named by the Secretary-General of the United Nations, one to be named by the Government and the third, who shall be the chairman, to be chosen by the first two; if either Party fails to appoint an arbitrator within 60 days of the appointment of 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. Except as otherwise agreed by the Parties, the tribunal shall adopt its own rules of procedure, provide for the reimbursement of its members and the distribution of expenses between the Parties, and take all decisions by a two-thirds majority. Its decision on all questions of procedure and substance shall be final and, even if rendered in default of one of the Parties, be binding on both of them.

Article XIV. Final provisions

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

2. This Agreement shall be applied provisionally from the date of signature and shall enter into force immediately upon the written notification by the Government to the United Nations that the Agreement has been ratified in accordance with its constitutional procedures. The Agreement shall continue to be provisionally applied during the Conference and for any additional period required to finalize any other activity related to the Conference, until its entry into force.

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

Signed in duplicates; Arabic and English at Vienna, Austria on .../…/.... Hijra, coinciding with 16/04/2009 AD, both texts being equally authentic.

For the United Nations	For the Government of Qatar
[*Signed*] Antonio Maria Costa	[*Signed*] Ali Bin Fetais Al-Marri
Executive Director United Nations Office on Drugs and Crime	Attorney-General State of Qatar

(*e*) Fourth Supplemental Agreement between the United Nations and the United States of America regarding the Headquarters of the United Nations. New York, 18 June 2009*

The United Nations and the United States of America:

Considering that the General Assembly, in its resolution 60/282 of 30 June 2006, approved Strategy IV (phased refurbishment) for the implementation of the Capital Master Plan, and that Strategy IV contemplates, *inter alia,* the leasing by the United Nations of temporary space for office and library purposes;

Considering, in light of the need for such acquisitions, that Section 20 of the Agreement between the United States of America and the United Nations regarding the Headquarters of the United Nations (Headquarters Agreement), signed at Lake Success on 26 June 1947, allows for the conclusion of supplemental agreements as necessary to fulfill the purposes of the Headquarters Agreement;

Considering that, in furtherance of Strategy IV, the United Nations has acquired leases of certain additional office and library space, and that these additional premises lie outside what is currently defined as the Headquarters District in Annex I of the Headquarters Agreement and in the Supplemental Agreement of 9 February 1966 as amended by the Exchange of Notes of 8 December 1966, the Second Supplemental Agreement of 28 August 1969, and the Third Supplemental Agreement of 10 December 1980;

Considering that it is desirable that, with respect to these newly leased premises, the United Nations and its officials as well as representatives of the Member States of the Unit-

* Entered into force on 18 June 2009 by signature, in accordance with article III.

ed Nations be accorded the necessary privileges arid immunities envisaged in Article 105 of the Charter of the United Nations and in the Headquarters Agreement;

Considering that Section 1 (a) of the Headquarters Agreement defines "headquarters district" to mean "(1) the area defined as such in Annex 1; (2) any other lands or buildings which may from time to time be included therein by supplemental agreement with the appropriate American authorities;" and

Desiring to conclude a Fourth Supplemental Agreement in accordance with Section 20 and Section 1(a) of the Headquarters Agreement in order to include the newly leased premises within the Headquarters District;

Have agreed as follows:

Article I

The Headquarters District within the meaning of Section 1 (a) of the Headquarters Agreement, as modified by the Supplemental Agreement of 1966 as amended, the Second Supplemental Agreement of 1969, and the Third Supplemental Agreement of 1980, shall include the premises described in the Annexes to this Fourth Supplemental Agreement.

Article II

The Secretary-General of the United Nations shall notify the Permanent Representative of the United States of America to the United Nations immediately should any of the premises referred to in Article I and described in the Annexes to this Fourth Supplemental Agreement, or any part of such premises, cease to be used by the United Nations. Such premises, or such part thereof shall cease to be a part of the Headquarters District from the date of such notification.

Article III

This Fourth Supplemental Agreement shall enter into force upon its signature.

In witness whereof the respective representatives have signed this Fourth Supplemental Agreement.

Done in duplicate, in the English language, at New York this 18 day of June 2009.

ANNEX I

The building located at 305 East 46th Street, New York, New York, excluding the elevators, stairwells, and mechanical areas in the building; provided, however, that the mechanical areas in the building that contain the United Nations' telecommunication wiring and data cabling shall not be excluded.*

* All as more particularly indicated on floor plans of these premises on file with the Secretariat of the United Nations.

ANNEX 2

The entire 8th, 9th, 10th, and 11th floors of the building located at 24-01 44th Road, Long Island City, New York. Said premises shall include all offices, rooms, halls, and corridors on the floors mentioned above but shall not include any lobbies, stairways, and elevators giving public access to other floors.

ANNEX 3

In the building located at 380 Madison Avenue, New York, New York:

a. the entire garage, 2nd, 6th, 8th. 9th, 10th, 11th, 12th, 13th, 14th, 15th, 16th, and 19th floors;

b. the northeast portion of the 7th floor consisting of approximately 19.651 square feet; and

c. units B03A and BO3C in the basement.

Said premises shall include all offices, rooms, halls, and corridors therein, but shall not include the elevators or stairwells giving public access to other floors, or the mechanical areas therein: provided, however, that the mechanical areas in the building which contain the United Nations' telecommunication wiring and data cabling shall be included.

(*f*) Exchange of letters constituting an agreement between the United Nations and the Government of Egypt regarding the hosting of the Workshop on the Implementation of Security Council Resolution 1540 (2004) for Africa, to be held in Cairo, from 7 to 10 December 2009. New York, 18 September 2009 and 7 October 2009*

I

18 September 2009

Excellency,

I have the honour to refer to your note dated 18 August 2009, confirming that your Government agrees to host a Workshop on the Implementation of United Nations Security Council Resolution 1540 (2004) in the Arab Republic of Egypt, to be held from 7 to 11 December 2009 (hereinafter referred to as "the Workshop") to be organized by the United Nations, represented by the Office for Disarmament Affairs (UNODA) (hereinafter referred to as "the United Nations"). I would like to take this opportunity to express my appreciation for your Government's kind offer. Further.

The Workshop, with the participation of States from the African region, aims at enhancing the national capacity for managing export control processes to further implementation efforts of resolution 1540 (2004) at a practical level. The Workshop is specifically tailored for border, customs and regulatory officials. It comprises the main elements of an export control process, including, *inter alia,* applicable laws (including national and international legal aspects), regulatory controls (including licensing provisions, end-user

* Entered into force on 7 October 2009, in accordance with the provisions of the said letters.

verification and awareness raising programmes) and enforcement (including commodity identification, risk assessment and detection methods). The Workshop is also aimed at improving information and experience-sharing between national and regional export control and enforcement authorities and enhancing cooperation between regulatory and enforcement officials and industry. Further, the Workshop is expected to assist the development, as appropriate, of assistance requests related to the implementation of resolution 1540 (2004). The Workshop will serve as a platform to enhance, as appropriate, cooperation with intergovernmental, regional and sub-regional organizations in the provision of such assistance.

The Workshop will be attended by:

(*a*) Representatives of Ghana, Republic of Kenya, Kingdom of Morocco, Nigeria, Republic of Uganda, Republic of South Africa, Republic of the Congo, Socialist People's Libyan Arab Jamahiriya, and United Republic of Tanzania;

(*b*) Governmental officials of the Arab Republic of Egypt and other States;

(*c*) Representatives of the European Union;

(*d*) Representatives of inter-governmental organizations;

(*e*) Representatives of non-governmental organizations and academic institutions;

(*f*) Representatives of the 1540 and 1267 Committees of the United Nations Security Council and their experts;

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

(*h*) Officials of Specialized and Related Agencies of the United Nations including officials of the International Atomic Energy Agency and the Organization for the Prohibition of Chemical Weapons.

The total number of participants will approximately be 60. The United Nations will, in due course, prior to the Workshop, inform the Government of the Arab Republic of Egypt of the names of the participants as specified above.

The Workshop will be conducted in English and Arabic.

I have the honour to propose that the following terms shall apply to the Workshop:

1. The United Nations shall be responsible for the planning and conduct of the Workshop including:

(*a*) the drawing up of its programme, sending invitations and making travel arrangements for participants;

(*b*) provision of travel and daily subsistence allowance for sponsored participants;

(*c*) provision of travel and daily subsistence allowance for UN officials, representatives of the 1540 Committee and its experts;

(*d*) rental of conference facilities;

(*e*) provision of sound system, if necessary;

(*f*) provision of equipment, including computers, printers and copy machines, as well as supplies, such as name plates, ID cards, stationary, etc.

(*g*) hiring of local temporary secretariat staff and conference assistants;

(*h*) provision of coffee breaks;

(*i*) interpretation equipment, if necessary; and

(j) provision of local transportation.

2. The Government of the Arab Republic of Egypt shall be responsible for:

(*a*) provision of political and administrative focal points; and

(*b*) designation of 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 the Arab Republic of Egypt is a Party, shall be applicable in respect of the Workshop. In particular, representatives of States participating in the Workshop shall enjoy the privileges and immunities provided under Article IV of the Convention. The participants invited by the United Nations shall enjoy the privileges and immunities accorded to experts on mission for the United Nations 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. The Government shall apply to the officials of the Specialized and Related Agencies of the United Nations, 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.

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 the Arab Republic of Egypt. 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 that are provided 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; 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 shall, unless the Parties otherwise agree, be resolved by negotiations or 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 the Arab Republic of Egypt 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

II

7 October 2009

Excellency,

In response to the your letter dated 18 September 2009 (copy attached) transmitting the terms proposed by the Secretariat for the arrangement for hosting in Egypt of the workshop on the implementation of Security Council resolution 1540 (2004), I have the pleasure to inform you that the Government of the Arab Republic of Egypt hereby confirms its approval of the terms of the attached proposal.

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

[*Signed*] Ambassador Maged Abdelaziz
Permanent Representative

(*g*) Exchange of letters constituting an agreement between the United Nations and the Republic of Indonesia regarding the United Nations Regional Training of Trainers Course, to be held in Jakarta, from 19 to 30 October 2009. New York, 16 October 2009 and 26 October 2009*

I

16 October 2009

Excellency,

I have the honour to refer your Note Verbal no s/219/PM/202/VIII/2009, reflecting your willingness to host the United Nations Regional Training of Trainers Course, hereinafter referred to as "the Course".

The Course, organized by the United Nations, represented by the Department of Peacekeeping Operations, hereinafter referred to as the "United Nations", in cooperation with the Government of Indonesia, represented by the Permanent Representative of Indonesia to the United Nations, hereinafter referred to as "the Government", will be held at the TNI Peacekeeping Center in Jakarta, Indonesia from 19 October to 30 October 2009.

The purpose of the Course will be to familiarise participants (Military Officers holding the ranks of Major to Lieutenant Colonel) to United Nations pre-deployment training standards called Core Pre-deployment Training Materials (CPTM) and Specialised Training Materials (STM) in order to improve the peacekeeping training capacity of Member States (Troops Contributing Countries).

1. Participation

   There will be no more than twenty-seven (28) *[sic.]* participants including:

   i. Up to sixteen (16) military officers from regional Troops Contributing Countries;

   ii. Up to six (6) participants from the host nation;

   iii. One (1) trainer from Member States;

   iv. Up to five (5) UN officials.

2. Language

   The Course will be conducted in English.

3. Financial Arrangements

   The financial arrangements for the Course shall be shared as follows:

   i. The United Nations Department of Peacekeeping Operations will fund:

* Entered into force on 26 October 2009, in accordance with the provisions of the said letters.

a. The cost of airfare, daily subsistence allowance and terminal expenses for the duration of their stay at the Course site for participants detailed in paragraph i, ii, iii and iv;

b. Training materials and documentation as deemed necessary by the Integrated Training Service (ITS);

c. The cost of name badges and name boards for all participants detailed in paragraph 1;

d. The cost of agreed stationary and office supplies required for official Course administration;

e. The costs associated with the use of high-volume copy machines;

f. The cost of transportation from/to airport to/from hotel/Course site, including a car with a driver for the United Nations staff participating in the Course for the whole duration of the Course;

g. Communications costs associated with the use of telephones, faxes and the internet required for official Course administration.

ii. The Government of Indonesia shall provide at no cost to the United Nations:

a. Provide one (1) plenary conference room, equipped with public address (PA) system, LCD projector with associated PC, white board and flip chart with stand;

b. Provide up to three (3) separate rooms for syndicate (working group) discussions;

c. Provide one (1) room for the Course Secretariat equipped with three (3) desktop computers with internet access, CD burners, two (2) printers (1 color and 1 black & white), fax and telephone with international line (for official use only);

d. Providing the facilitator's room equipped with four (4) desktop computers with internet access, and one (1) black & white printer;

e. Providing commercial communication equipment for domestic and international private calls (costs will be borne by individuals);

f. Arrangements for adequate accommodation or residence for participants and United Nations trainers, including meals, at a cost agreed with the United Nations;

g. Arranging transportation from/to airport, to/from hotel/Course site, including a car with driver for United Nations staff participating in the Course for the whole duration of the Course;

h. Cover the cost of meals and accommodation for participants detailed in paragraphs 1.ii and 4.ii.a and b;

i. Cover the cost of provision of personnel for the Course;

j. Medical coverage for minor ailments, first aid and, if needed, immediate transport to a hospital. Should major treatment be required, the host Government will provide adequate facilities for all participants detailed in paragraph

1 i, and iv, which will be at individual (for those with medical insurance) or her/his national government expense;

k. Welcoming and closing ceremonies in accordance with host country's standards;

l. Social events, if any.

4. Miscellaneous

i. The United Nations will prepare:

a. A final Course programme and associated training materials;

b. A final list of all participants, in consultation with the Government of Indonesia;

c. A list of participants to the Government of Indonesia at least twenty (20) days before the Course starts;

d. A final report of the Course.

ii. The Government of Indonesia will prepare at no cost to the UN:

a. Appointing liaison and administrative officers as Executive Secretaries of the Course, who will be responsible, in consultation with United Nations representatives, for all administrative and personnel arrangements for the Course;

b. Providing staff (English-speaking typists and assistant Course officers) to ensure the efficiency of the Course.

5. In addition, I wish to propose that the following terms shall apply to the Course:

i. 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 Course. In particular, the participants invited by the United Nations shall enjoy the privileges and immunities accorded to experts on mission for the United Nations under articles VI and VII of the Convention. Officials of the United Nations participating in or performing functions in connection with the Course shall enjoy the privileges and immunities provided under articles V and VII of the Convention. Officials of the Specialized Agencies participating in the Course 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;

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

iii. Personnel provided by the Government for the Course shall enjoy immunity from legal process in respect of words spoken or written or any act performed by them in their official capacity in connection with the Course;

iv. All participants and all persons performing functions in connection with the Course shall have the right to unimpeded entry and exit from Indonesia. Visas and entry permits, where required, shall be granted free of charge. When applications are made four weeks before the opening of the Course, visas shall be granted not later than two weeks before the opening of the Course. 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. 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 Course;

v. The Government shall furnish such police protection as may be required to ensure the effective functioning of the Course 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.

vi. 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 Course premises that are provided by or are under the control of the Government for the Course;

   b. Injury to persons or damage to or loss of property caused by, or incurred in using the transportation services provided by or are under the control of the Government;

   c. The employment for the Course of personnel provided or arranged by the Government;

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

vii. Any dispute concerning the interpretation or implementation of this 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 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 decision on all questions of procedure and substance shall be final and, even if rendered in default of one of the parties, be binding on both of them.

viii. 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 Indonesia on the holding of the, United Nations Regional Training of Trainers Course which shall enter into force on the date of your reply and shall remain in force for the duration of the Course, and for such additional period as is necessary for its preparation and for all matters relating to any of its provisions to be settled.

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

[*Signed*] Alain Le Roy
Under-Secretary-General
for Peacekeeping Operations

II

26 October 2009

Excellency,

The Permanent Mission of the Republic of Indonesia to the United Nations presents its compliments to the Department of Peacekeeping Operations, and with reference to its letter dated 16 October 2009 concerning the exchange of letters for Training of Trainers (TOT) Course, has the honor to inform that the Government of Indonesia has confirmed its agreement to the exchange of letters.

The Government of the Republic of Indonesia is very pleased to host the course to be held in Jakarta, Indonesia, from 19 October to 30 October 2009 and expresses its readiness to serve as a regional hub for TCC/PCC peacekeeper capacity building.

The Permanent Mission of the Republic of Indonesia avails itself of this opportunity to renew to the Department of Peacekeeping Operations the assurance of its highest consideration.

[*Signed*] Hasan Kleib
Ambassador/Charge d'affaires a.i.

(*h*) Exchange of letters constituting an agreement between the United Nations and the Government of the Netherlands concerning the International Seminar on Early Warning and Business Cycle Indicators, to be held in Scheveningen, from 14 to 16 December 2009. New York, 12 November 2009 and 23 November 2009*

I

12 November 2009

Excellency,

I have the honour to refer to the arrangements concerning the "International Seminar on Early Warning and Business Cycle Indicators" (hereinafter referred to as "the Semi-

* Entered into force on 23 November 2009, in accordance with the provisions of the said letters.

nar"). The Seminar 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 the Netherlands represented by Statistics Netherlands (hereinafter referred to as "the Government"). The Seminar will be held at Statistics Netherlands office in The Hague, The Netherlands, from 14 to 16 December 2009.

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

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

a) up to 22 participants from developing countries selected by the United Nations;

b) local government officials selected by the Government;

c) up to 4 officials from the United Nations;

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

2. The total number of participants will be approximately 70. The list of participants will be determined by the United Nations in consultation with the Government prior to the holding of the Seminar.

3. The Seminar will be conducted in English.

4. The United Nations will be responsible for:

a) planning and running of the Seminar and the preparation of the appropriate documentation;

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

d) substantive support during and after the Seminar.

5. The Government will be responsible for:

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

b) reproduction of the Seminar 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 Seminar.

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 Seminar 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 Govern-

ment is a party, shall be applicable in respect of the Seminar. 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 Seminar 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 Seminar shall enjoy such privileges and immunities, facilities and courtesies as are necessary for the independent exercise of their functions in connection with the Seminar;

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 Seminar;

d) All participants and all persons performing functions in connection with the Seminar shall have the right of entry into and exit from the Netherlands. Visas and entry and exit 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 concerning a particular individual. Such objections, however, must relate to specific criminal or security related matters and not to nationality, religion, professional or political affiliation.

8. The Government shall furnish such police protection as may be required to ensure the effective functioning of the Seminar in an atmosphere of security and 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 Seminar;

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 Seminar by or under the control of the Government;

c) the employment for the Seminar 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. 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 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 the Netherlands regarding the hosting of the Seminar, which shall enter into force on the date of your reply and shall remain in force for the duration of the Seminar and for such additional period as is necessary for 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

II

New York, 23 November 2009

Dear Under-Secretary-General,

I have the honor to refer to your letter reference DESA-09/1702 of 12 November 2009, relating to the proposed arrangements for the hosting of the "International Seminar on Early Warning and Business Cycle Indicators", which is scheduled to be held in Scheveningen, the Netherlands, from 14 to 16 December 2009, which reads as follows:

[*See letter I*]

In reply, I have the honor to confirm that the terms of your proposal are acceptable to the Government of the Kingdom of the Netherlands. Consequently, your letter and this reply shall constitute an Agreement between the United Nations and the Government of the Kingdom of the Netherlands, which shall enter into force on the date of this reply and shall remain in force for the duration of the Seminar 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, however, not to exceed one year.

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

[*Signed*] Herman Schaper

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

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

In 2009, the following State acceded to the Convention:**

State	*Date of receipt of instrument of accession*	*Specialized agencies*
Morocco	8 July 2009	WTO***

2. Food and Agriculture Organization of the United Nations

(*a*) Agreements regarding the establishment of Food and Agriculture Organization of the United Nations (FAO) Representations and Regional Offices

Supplementary agreements were signed for the Near East Regional Office (Egypt), the Sub-Regional Office for the Caribbean (Barbados) and the Sub-Regional Office for North Africa (Tunisia).

(*b*) Agreements based on the standard Memorandum of Responsibilities in respect of 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 2009 with the Governments of the following countries acting as hosts to such sessions: Brazil, Kenya, Mexico, Montenegro, Morocco, Philippines, Slovakia, Slovenia, Tunisia and the United States of America.

---

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

** For the list of the State parties, see *Multilateral Treaties Deposited with the Secretary-General,* available on the website of the Treaty Section of the United Nations Office of Legal Affairs: http://treaties.un.org/Pages/ParticipationStatus.aspx.

*** See United Nations Juridical Yearbook 1972, United Nations Publications, Sales No. E.74.V.1, page 32.

3. United Nations Educational, Scientific and Cultural Organization

For the purpose of holding international conferences on the territory of member States, UNESCO concluded various agreements that contained the following provisions concerning the legal status of the Organization:

Privileges and Immunities

The Government of [name of the State] shall apply, in all matters relating to this meeting, the provisions of the Convention on the Privileges and Immunities of the Specialized Agencies of the United Nations as well as annex IV thereto to which it has been a party from [date].

In particular, the Government shall not place any restriction on the entry into, sojourn in, and departure from the territory of [name of the State] of all persons, of whatever nationality, entitled to attend the meeting by virtue of a decision of the appropriate authorities of UNESCO and in accordance with the Organization's relevant rules and regulations.

Damage and accidents

As long as the premises reserved for the meeting are at the disposal of UNESCO, the Government of [name of State] shall bear the risk of damage to the premises, facilities and furniture and shall assume and bear all responsibility and liability for accidents that may occur to persons present therein. The [name of State] authorities shall be entitled to adopt appropriate measures to ensure the protection of the participants, particularly against fire and other risks, of the above-mentioned premises, facilities and furniture. The Government of [name of State] may also claim from UNESCO compensation for any damage to persons and property caused by the fault of staff members or agents of the Organization.

4. World Bank Group and the International Monetary Fund

Memorandum of Understanding between the Government of the Republic of Turkey and the World Bank Group (International Bank for Reconstruction and Development, International Finance Corporation, International Development Association, International Centre for Settlement of Investment Disputes, Multilateral Investment Guarantee Agency) and the International Monetary Fund for the 2009 Annual Meetings of the Boards of Governors of the World Bank Group and the International Monetary Fund. Singapore, 20 September 2006

Whereas on November 16, 2005, the World Bank Group (the International Bank for Reconstruction and Development (IBRD), the International Finance Corporation (IFC), the International Development Association (IDA), the International Centre for Settlement of Investment Disputes (ICSID), and the Multilateral Investment Guarantee Agency (MIGA) (collectively hereunder called the "Bank") and the International Monetary Fund (hereunder called the "Fund"), received invitations made on behalf of the Government of Turkey to hold the 2009 Annual Meetings of the Boards of Governors' of the Bank and the Fund in Istanbul;

Whereas on August 21, 2006, the Boards of Governors of the Bank and the Fund adopted resolutions accepting the said invitations;

Whereas the Government of Turkey, the Bank and the Fund recognize the need to start the preparation of the Annual Meetings well in advance of the date set for such meetings and to agree on the basic responsibilities of each party in this task;

Now therefore, the parties hereto agree as follows:

1. Definitions

In this Memorandum of Understanding:

a. "Government" means the Government of the Republic of Turkey.

b. "Organizations" means the Bank and the Fund.

c. "Meetings" means the 2009 Annual Meetings of the Boards of Governors of the Organizations and any ancillary meetings to be held in Turkey.

d. "Articles of Agreement" means the Agreements establishing the Fund, IBRD, IFC, IDA and the Conventions establishing ICSID and MIGA.

2. Dates of 2009 annual meetings

Arrangements will be made for the Annual Meetings of the Organizations to be held in Istanbul on Tuesday, October 6 and Wednesday, October 7, 2009, both inclusive, it being understood that ancillary meetings will be held commencing possibly as early as Monday, September 28, 2009, and continuing after the Annual Meetings, possibly through Thursday, October 8, 2009.

3. Obligations of the Government

a. Status, privileges and immunities

(1) The Government notes the legal status and privileges and immunities of the Organizations, and their Governors, Executive Directors, Alternates, members of committees, representatives, advisors to any of the foregoing persons, and their officers and employees, accorded by the Articles of Agreement of the respective Organizations, and shall continue to comply with its obligations under these Articles. In particular, the Government shall assure expeditious entry procedures, including the issuance of visas when required for the above noted individuals of the Organizations to be present for the Meetings, as well as for the accompanying family members of all the foregoing officials and individuals. The Government shall also assure expeditious entry procedures, including the issuance of visas when required for any observers and other persons who are accredited to or invited by the Organizations to be present for the Meetings.

(2) The Government agrees that the Governors, Executive Directors, Alternates, members of committees, representatives, advisors to any of the foregoing persons, and the officers and employees of the Organizations shall enjoy within and with respect to the territory of Turkey immunity from personal arrest or detention, and from seizure of their personal baggage.

(3) The Government further agrees that representatives of members of the Organizations at the Meetings shall have the right to use codes and to receive papers or correspondence by courier or in sealed bags and that all papers and documents of these representatives shall be inviolable.

b. Custom taxes and other immunities

(1) The Organizations are immune from search, confiscation, expropriation, or any other form of seizure by executive or legislative action with respect to their property and assets. Their archives are inviolable. The Organizations, their assets, property, income, operations, and transactions authorized by their respective Articles of Agreement are immune from all taxation. Moreover, no value-added-tax, or similar tax, shall be levied on the supply of goods, services, or accommodation to the Organizations, whether the tax is due by the seller/supplier or the purchaser. The Organizations are also immune from liability for the collection or payment of any tax or duty. Accordingly, the Government shall arrange to have admitted, and the exit permitted, free of duty and without inspection, of all property brought into or taken from Turkey, by or on behalf of the Organizations, for the 2009 Annual Meetings. Such property shall be identified by special shipping labels issued by the Organizations in collaboration with the Government.

(2) Personal baggage belonging to the Organizations' Governors, Executive Directors, Alternates, members of committees, representatives, advisors to any of the foregoing persons, and their officers and employees identified by special luggage tags to be issued by the Organizations in collaboration with the Government, shall be admitted free of duty and taxes and expedited through customs upon entry into, and exit from, Turkey. Other persons who are accredited to or invited by the Organizations to be present for the meetings shall be granted standard *bona fide* travellers' allowances and their personal baggage, identified by special luggage tags to be issued by the Organizations in collaboration with the Government, expedited through customs upon entry into, and exit from, Turkey.

(3) The Government shall ensure that the Organizations are able to send and receive communications in connection with the Meetings without censorship or interference. The communications of the Organizations shall be accorded the same treatment as the official communications of other Governments.

c. Services and facilities for the meetings

The Government shall provide the services and facilities for the Meetings as set forth below. The Organizations have furnished to the Government copies of their manual entitled "Annual Meetings Requirements Manual" ("Requirements Manual") which serves as a guide to the requirements of the Meetings. The Organizations have informed the Government that the Requirements Manual is expected to be modified following the 2006 Annual Meetings, as a result of revised requirements, and the review by the Organizations' Executive Boards of the 2006 Meetings. The Organizations shall communicate the modified requirements to the Government as soon as they are completed and the Government shall use its utmost efforts to meet any new requirements to the extent that space and facilities is available in convenient and appropriate locations in Istanbul. The Government shall also permit public expression by accredited participants and non-participants in connection with the Annual Meetings

in a manner that is consistent with the Government's obligations under this Memorandum, including as noted in Section 3 c (5) (b), and is acceptable to the Organizations.

(1) Accommodation

(*a*) The Government, at its expense, shall provide space for, and set up and dismantle, offices, meeting rooms, banqueting rooms, and other facilities, in the CNR Centre, or other venues, as deemed necessary by the Organizations in consultation with the Government, as required and agreed between the Secretaries of the Organizations and the Government, or their respective designees. Assignment of this space shall be determined by the Organizations.

(*b*) The Government shall also arrange to make available approximately 330 offices, within the facilities mentioned in (a) above, for the period Saturday, September 26, 2009, (or earlier) through Wednesday, October 7, 2009 (or later), to be for use by, and at the expense of, individual delegations, and observer organizations, and approximately 620 offices for the same period to be used by Executive Directors, the managements and other staff of the Organizations, and the Joint Secretariat. Assignment of this space shall also be determined by the Organizations.

(*c*) The Government shall also arrange with various hotels, as specified by the Secretaries of the Organizations or their designees, in close consultation with the Government or its designees, 4,000 units, for sleeping accommodation to be made available for official participants in the Meetings at the participants' expense. Assignment of sleeping accommodation to individuals shall be done by the Organizations no later than Monday, September 7, 2009, and any sleeping accommodation unassigned at that date shall be released as determined by the Organizations. In addition, the Government will make arrangements for accommodation for Visitors, as defined in the Requirements Manual, to the Annual Meetings at the Visitors' own expense.

(2) Temporary employees

The Government shall assist the Organizations in recruiting, in accordance with local laws and other requirements, such temporary employees of the Organizations as may be required for the conduct of the Meetings in accordance with specifications to be furnished sufficiently in advance to the Government by the Organizations. The Government shall bear the administrative cost of this assistance and shall meet the payroll expenses for such temporary employees on behalf of the Organizations, subject to reimbursement, as set out in paragraph 4. a. below.

(3) Transportation services

The Government shall provide, at its expense, local transportation services for the delegations and the Organizations that will be determined between the Secretaries of the Organizations and the Government, or their respective designees. Local transportation will include, but not be limited to, transportation between the airport and designated hotels, between designated hotels and the registration site, between the registration site and the Annual Meetings site, between designated hotels and the Annual Meetings site. Transportation shall also be provided for official social events.

(4) Supplies, equipment and services

The Government shall provide, without cost to the Organizations, supplies, furniture, equipment, utilities (including connections), communications facilities, and services required

for offices and meeting rooms, in accordance with lists to be supplied by the Organizations. In general, the requirements shall be in accordance with the guidance provided in the Annual Meetings Requirements Manual. However, models and quantities may be modified by mutual agreement of the parties to meet requirements. In recognition of the need to offset some of the costs incurred in hosting the Annual Meetings, the Organizations note that the Government may need to raise funding, and solicit goods and services in kind, from private sector companies and other organizations. In this context, however, the Organizations, the Annual Meetings, or any associated event, may not be associated with any private sector entities, or other organization(s), without the prior approval of the Organizations.

(5) Security, Safety and Health Measures

(*a*) The Government shall, at its own expense:

(i) provide fire protection and ambulance service at the site of the Meetings;

(ii) provide a medical room staffed with a physician and a qualified nurse from at least 8:30 a.m. to 6:30 p.m. each day beginning Monday, September 28, through Friday, October 9, 2009 or later if required; provide for a physician to be available on call during that part of the day when no physician is in the health room; and make arrangements for the availability of dentists and other medical specialists to the participants while in Istanbul; and

(iii) arrange adequate emergency medical facilities at the Ataturk International Airport during the periods September 28 to October 10, 2009, all dates inclusive.

(*b*) The Government shall take all necessary measures for the safe passage of all persons referred to in paragraph 3. a. above in and out of Turkey and for their personal security and the safety of their property and the property of the Organizations and delegations during their stay there.

(6) Transportation of Equipment

The Government shall pay the cost of transporting the Organizations' shipments within Turkey.

(7) Traffic

The Government shall use its best efforts to expedite traffic flows between the site of the Meetings and the hotels in which most of the participants will be housed.

4. Obligations of the Organization

The Organizations shall:

a. Reimburse the payroll expenses for personnel recruited in accordance with paragraph 3 c (2) above;

b. Provide minor supplies and equipment, which it is agreed cannot or should not be furnished by the Government or as specified in the Requirements Manual;

c. Pay for communications initiated by the Organizations including, without limitation, the actual charges for mail, cables, facsimile and carrier traffic so initiated, as well as for leased lines between the Organizations in Turkey and Washington, D.C. for data and facsimile traffic;

d. Pay for social events arranged by the Organizations; and

e. Pay all transportation expenses for the Organizations' shipments to the port of entry into Turkey and from there to destinations outside Turkey.

5. Undertakings

The undertakings of the Government under this Memorandum of Understanding shall be effected in accordance with relevant and applicable laws.

6. Natural disaster or a major emergency

In the event of any material adverse change in the condition of the host country due to the emergence of a natural disaster, such as earthquake, or an emergency situation the Government and the Organizations shall consult as to the possible suspension or postponement of the date of the Meetings.

7. Channel of Communications

Channels of Communications on matters related to the Meetings and to this Memorandum of Understanding shall be as follows:

a. For the Organizations:

Mail Address:

Joint Secretariat
IMF-World Bank Group
Washington, DC 20431, USA

Courier Deliveries:

Joint Secretariat
IMF-World Bank Group
IMF Building
700-19th Street, N.W.
Washington, DC 20006, USA

Facsimile Number:

(1-202) 623-4100

b. For the Government:

Mail Address:

IMF-Dünya Bankası 2009 Yıllık Toplantıları Komitesi
Hazine Müsteşarlığı, Ankara, 06510, Turkey

Courier Deliveries:

IMF-Dünya Bankası 2009 Yıllık Toplantıları Komitesi
Hazine Müsteşarlığı
İsmet İnönü Bulvarı, No: 36
Emek-Ankara, 06510, Turkey

Facsimile Number:
(90) 312-2128550
(90) 312-2128737

8. Authority

This Memorandum of Understanding shall be carried out, and all action deemed necessary in connection therewith, shall be taken by the Undersecretariat of Treasury for the Government and by the Secretaries of the Bank and the Fund for the Organizations, or their respective designees.

9. Consideration of time and economy

The Organizations and the Government will cooperate to ensure that notice of any changes proposed to this Memorandum of Understanding will be given as early as practicable and that best efforts shall be made to minimize the costs of the Meetings and to facilitate the smooth functioning of the Meetings and the preparation for them in a collaborative spirit.

For the World Bank Group:
[*Signed*] Paul Wolfowitz
President
Date 09/20/2006

For the International Monetary Fund:
[*Signed*] Rodrigo de Rato
Managing Director

For the Government of Turkey:
[*Signed*] Ibrahim H. Canakci
Undersecretary of Treasury
Date September 20, 2006

[*Signed*] Ali Babacan
Minister of State
Date September 20, 2009

5. United Nations Industrial Development Organization

(*a*) Memorandum of cooperation between the United Nations Industrial Development Organization and the Eurasian Economic Community (EurAsEC). 19 January 2009*

Article V
Privileges and Immunities

Nothing in or relating to the Memorandum of Cooperation shall be deemed a waiver, express or implied, of any of the privileges and immunities of UNIDO or EurAsEC.

* Entered into force on 19 January 2009.

(*b*) Memorandum of understanding between the United Nations Industrial Development Organization and the Latin American Energy Organization (OLADE). 16 and 25 February 2009 *

Article IV. General Provisions

…

IV.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 or OLADE.

(*c*) Implementation agreement between the United Nations Environment Programme (UNEP) and the United Nations Industrial Development Organization (UNIDO) and the Government of Sudan, represented by its Higher Council for Environment and Natural Resources for the project entitled "Development of a Sustainable Integrated National Programme for Sound Management of Chemicals". 24 March 2009**

Article 5
Status of Personnel

For the purpose of implementation of this Agreement, no agents or employees of the Administrative Agent, the Participating Organization and the Applicant shall be considered as an agent or employee of any of the others and, thus, the personnel of one shall not be considered as staff members, personnel or agents of any of the others. Without restricting the generality of the preceding sentence, the Administrative Agent, the Participating Organization and the Applicant shall not be liable for the acts or omissions of the others or their personnel, or of persons performing services on their behalf.

Article 6
Dispute settlement

The Administrative Agent, the Participating Organization and the Applicant shall use their best efforts to promptly settle through direct negotiations any dispute, controversy or claim arising out of or in connection with this Agreement or any breach thereof. Any such dispute, controversy or claim which is not settled within sixty (60) days from the date either party has notified the other party of the nature of the dispute, controversy or claim and of the measures which should be taken to rectify it, shall be resolved through consultation between the Executive Heads of the Parties or their duly authorized representatives.

---

* Entered into force on 25 February 2009.

** Entered into force on 24 March 2009.

(*d*) Memorandum of understanding between the United Nations Environment Programme (UNEP), the United Nations Industrial Development Organization (UNIDO) and the United Nations Development Programme (UNDP) regarding the Operational Aspects of the United Nations China appeal for Wenchuan earthquake early recovery support – environment sector (parts I and II) in China*

Section I
Appointment of Administrative Agent; its Status, Duties and Fee

…

5. None of the Participating United Nations Organizations will be responsible for the acts or omissions of the Administrative Agent or its personnel, or of persons performing services on its behalf, except in regard to its respective contributory acts or omissions. With respect to contributory acts or omissions of the Participating UN Organizations, the resulting responsibility will be apportioned among them or any one of them to the extent of such contributory acts or omissions, or as may otherwise be agreed. In addition, donors will not be directly responsible for the activities of any person employed by the Participating United Nations Organizations or the Administrative Agent as a result of this Memorandum of Understanding.

…

Section III
Activities of the Participating United Nations Organizations

…

3. Where a Participating United Nations Organization wishes to carry out its Joint Programme activities through or in collaboration with a third party, it will be responsible for discharging all commitments and obligations with such third parties, and no other Participating United Nations Organization, nor the Administrative Agent, will be responsible for doing so.

4. In carrying out their Joint Programme activities, none of the Participating United Nations Organizations will be considered as an agent of any of the others and, thus, the personnel of one will not be considered as staff members, personnel or agents of any of the others. Without restricting the generality of the preceding sentence, none of the Participating United Nations Organizations will be liable for the acts or omissions of the other Participating United Nations Organizations or their personnel, or of persons performing services on their behalf.

* Entered into force on 9 April 2009.

(*e*) Memorandum of understanding between the Government of Spain and the United Nations Industrial Development Organization, regarding the implementation of certain projects in Latin America and the Caribbean. 25 March and 20 April 2009*

13. Nothing in this agreement shall be deemed a waiver, express or implied, of any of the privileges and immunities of the United Nations, including UNIDO.

(*f*) Memorandum of understanding between the United Nations Industrial Development Organization (UNIDO) and the United Nations Office for Project Services (UNOPS) on collaborative arrangements in the Enhanced Integrated Framework programme. 24 June 2009**

Article I
TFM ; its Status, Duties and Fee

…

2. UNIDO shall not be responsible for the acts or omissions of the TFM or its personnel, or of persons performing services on its behalf, except in regard to any UNIDO's contributory acts or omissions of its own. With respect to such contributory acts or omissions, the resulting liability shall be apportioned among them or any one of them to the extent of such contributory acts or omissions, or as may otherwise be agreed.

…

Article III
UNIDO Activities

…

3. Where UNIDO wishes to carry out its Project/Programme activities through or in collaboration with a third party as specified in the relevant Project/Programme Documents, it shall be responsible for discharging all commitments and obligations with such third parties, and no other Partner United Nations Organization, nor the TFM, shall be responsible for doing so.

4. In carrying out their Project/Programme activities, UNIDO shall not be considered as an agent of any of the other Partner Organizations and, thus, the personnel of one will not be considered as staff members, personnel or agents of any of the others. Without restricting the generality of the preceding sentence, none of the Partner United Nations Organizations will be liable for the acts or omissions of the others or their personnel, or of persons performing services on their behalf.

---

* Entered into force on 19 May 2009.

** Entered into force on 24 June 2009.

(*g*) Letter of agreement between the Lao National Chamber of Commerce and Industry and the United Nations Industrial Development Organization regarding the implementation of the project entitled "Promoting Private Sector Development through Strengthening of Lao Chambers of Commerce and Industry and Business Associations". 23 and 30 July 2009 *

2. The designated institution recognizes that the United Nations agency enjoys privileges and immunities under the Convention on the Privileges and Immunities of the Specialized Agencies, to which the Government of the Lao People's Democratic Republic became a signatory on 10 October 1988.

…

21. The designated institution shall handle and be responsible for any third-party claim or dispute arising from operations under this agreement against UNDP or the United Nations agency, their officials or other persons performing services on their behalf, and shall hold them harmless in respect of such claims or disputes. The foregoing provision shall not apply where the parties agree that a claim or dispute arises from the gross negligence or willful misconduct of the above-mentioned individuals.

(*h*) Contribution agreement respecting the implementation of the project "Terminal Phase-Out of Methyl Bromide in Mexico, Structures Component, Phase I", between Her Majesty the Queen in Right of Canada and the United Nations Industrial Development Organization. 17 and 24 August 2009**

3. Activities to be undertaken by the initial recipient and its responsibilities

…

All references to "debts owed / due to Her Majesty the Queen in Right of Canada" in this Agreement shall be without prejudice and subject to the privileges and immunities of UNIDO.

…

Appendix A. Contribution agreement terms and conditions

…

5. Liability

Subject to UNIDO's privileges and immunities under international law and any applicable treaty between UNIDO and the Government of the country where the Project is implemented, UNIDO shall be responsible for dealing with any tort claims by third parties for personal injury, loss, illness, death or damage to their property arising from the Project activities, or for claims actions, suits and proceedings for the use of any invention claimed in a patent, or infringement or alleged infringement of any patent or any regis-

* Entered into force on 30 July 2009.

** Entered into force on 24 August 2009.

tered industrial obligations in connection with this Agreement, and Canada shall have no responsibility therefore.

Canada shall not accept any responsibility or liability for any claims, debts, demands, damage or loss as a result of the implementation of this Agreement.

…

20. Not a partnership

Canada and the Initial Recipient expressly disclaim any intention to create a partnership, joint venture or agency. It is understood, acknowledged and agreed that nothing contained in this Agreement nor any acts of Canada's representative or the Initial Recipient shall constitute or be deemed to constitute Canada and the Initial Recipient as partners, joint ventures or principal and agent in any way or for any purpose. The Initial Recipient shall not represent or hold itself out to be an agent of Canada and *vice versa*. No party shall have any authority to act for or to assume any obligations or responsibility on behalf of the other party.

Subject to UNIDO's privileges and immunities under international law and any applicable treaty between UNIDO and the Government of the country where the Project is implemented, the Initial Recipient agrees to be liable to Canada for any liability that Canada incurs by virtue of being found to be liable with the Initial Recipient as a partner of, joint venture with, or principal of the Initial Recipient. For greater certainty, the Initial Recipient assumes no responsibility for any liability arising to Canada as a result of the act or omission of Canada or its agent which are the basis for the finding that Canada or his agent is a partner of, joint venture with, or principal of the Initial Recipient.

(*i*) Agreement between the Government of the Italian Republic and the United Nations Industrial Development Organization regarding the implementation of a project in Lebanon entitled "Development and Enterprise Investment Promotion (EDP) Program". 30 June and 17 September 2009*

Article XIII

Nothing in this Agreement shall be interpreted as an express or implied waiver of UNIDO's privileges and immunities.

…

H. Legal context

The present project is governed by the provisions of the Standard Basic Assistance Agreement signed by UNDP and the Government of Lebanon, applied, *mutatis mutandis*, to the UNIDO project.

* Entered into force on 17 September 2009.

(*j*) Trust fund agreement between the United Nations Industrial Development Organization and the Iran Nanotechnology Initiative Council on behalf of the Government of the Islamic Republic of Iran regarding the implementation of a project in Iran entitled "Support to the Establishment and Development of an International Centre on Nanotechnology (ICN)". 25 September 2009*

ANNEX A

H. Legal context

The Government shall apply to this UNIDO project, including its property, funds, assets and its officials and experts, the privileges and immunities in accordance with the Standard Technical Assistance Agreement between the United Nations and the Specialized Agencies and the Government of Iran dated 2 February 1956.

(*k*) Contribution agreement between the European Community and the United Nations Industrial Development Organization on trade-related technical assistance, signed on 6 November 2009**

SPECIAL CONDITIONS

Article 1. Purpose

…

1 (2) The Organization will be awarded the contribution on the terms and conditions set out in this Agreement, which complies with the provisions of the Financial and Administrative Framework Agreement and which consists of these special conditions ("Special Conditions") and their annexes.

FINANCIAL AND ADMINISTRATIVE FRAMEWORK AGREEMENT BETWEEN THE EUROPEAN COMMUNITY, REPRESENTED BY THE COMMISSION OF THE EUROPEAN COMMUNITIES, AND THE UNITED NATIONS

…

14. Settlement of disputes

14.1. The affected parties shall endeavour to settle amicably any dispute or complaint relating to the interpretation, application or fulfilment of this Agreement or any contribution-specific agreement, including their existence, validity or termination. In default of amicable settlement, any affected party may refer the matter to arbitration in accordance with the Permanent Court of Arbitration Optional Rules for Arbitration Involving International Organisations and States in force at the date of this Agreement.

14.2. The language to be used in the arbitral proceedings shall be English. The appointing authority shall be the Secretary General of the Permanent Court of Arbitration following a written request submitted by either party. The Arbitrator's decision shall be binding on all affected parties and there shall be no appeal.

---

* Entered into force on 25 September 2009.

** Entered into force on 6 November 2009.

14.3. 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.

14.4. Contribution-specific agreements shall contain provisions incorporating the above.

(*l*) Exchange of letters constituting an agreement between the Ministry for Foreign Affairs of Finland and the United Nations Industrial Development Organization on the utilization of the Finnish contribution to UNIDO in the year 2009. 27 October and 16 November 2009*

17. The Ministry shall not accept any responsibility or liability for any claims, debts, demands, damage, or loss as a result of the implementation of this Agreement.

(*m*) Agreement between the United Nations Industrial Development Organization and the Government of the Federal Republic of Nigeria regarding the arrangements for the organization of the high-level conference on the development of agribusiness and agro-industries in Africa, signed on 20 November 2009**

Article 19. Privileges and immunities

1. Subject to the provisions of this article, the Convention on the Privileges and Immunities of the United Nations, adopted by the General Assembly on 13 February 1946, to which Nigeria is a party, shall be applicable in respect of the Conference. In particular, the representatives, alternates, advisers and experts of States, referred to in article 2, paragraph 1 above, shall enjoy the privileges and immunities provided for under article IV of the Convention, the officials of UNIDO and FAO performing functions in connection with the Conference, referred to in article 2, paragraph 1 above, shall enjoy the privileges and immunities provided for under articles V and VII of the Convention and any experts on mission for UNIDO and FAO in connection with the Conference shall enjoy the privileges and immunities provided for under articles VI and VII of the Convention.

2. The representatives of the United Nations and of the specialized or related agencies, referred to in article 2, paragraph 1 above, shall enjoy the privileges and immunities provided for under the Convention on the Privileges and Immunities of the United Nations, the Convention on the Privileges and Immunities of the Specialized Agencies, or the Agreement on the Privileges and Immunities of the International Atomic Energy Agency, as appropriate.

3. The representatives of African and other intergovernmental organizations referred to in article 2, paragraph 1 above, shall enjoy the privileges and immunities accorded to them under any relevant international agreement to which the Government is a party, or,

* Entered into force on 16 November 2009.

** Entered into force on 20 November 2009.

if there is none, the privileges and immunities provided for under article V of the Convention on the Privileges and Immunities of the United Nations.

4. The representatives of governmental and non-governmental organizations, referred to in article 2, paragraph 1 above, shall enjoy immunity from legal process in respect of words spoken or written and any act performed by them in connection with their participation in the Conference.

5. The individual experts, referred to in article 2, paragraph 2 above, shall be granted the status of experts on mission for UNIDO and FAO pursuant to the Convention on the Privileges and Immunities of the United Nations.

6. The personnel provided by the Government under article 13 above, shall enjoy immunity from legal process in respect of words spoken or written and any act performed by them in their official capacity in connection with the Conference.

7. Without prejudice to the preceding paragraphs of the present article, all persons performing functions in connection with the Conference, including those referred to in article 13 and all those participating in the Conference, shall enjoy the privileges, immunities and facilities necessary for the independent exercise of their functions in connection with the Conference.

8. All persons referred to in article 2 shall have the right of entry into and exit from Nigeria, and no impediment shall be imposed on their transit to and from the conference area. They shall be granted facilities for speedy travel. Visas and entry permits, where required, shall be granted free of charge, as speedily as possible and not later than two weeks before the date of the opening of the Conference; if the application is made later, the visa shall be granted not later than three days from the receipt of the application. Arrangements shall also be made to ensure that visas for the duration of the Conference are delivered at the airport or other specified points of entry to participants who were unable to obtain them prior to their arrival. Exit permits, where required, shall be granted free of charge, a speedily as possible, and in any case not later than three days before the closing of the Conference.

9. For the purpose of the Convention on the Privileges and Immunities of the United Nations, the conference premises specified in article 8, paragraph 1 above, shall be deemed to constitute premises of UNIDO and FAO in the sense of section 3 of the Convention and access thereto shall be subject to the authority and control of UNIDO and FAO. The premises shall be inviolable for the duration of the Conference, including the preparatory stage and the winding-up.

10. All persons referred to in article 2 above shall have the right to take out of Nigeria at the time of their departure, without any restriction, any unexpended portions of the funds they brought into Nigeria in connection with the Conference and to reconvert any such funds at their departure.

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

Article 20. Settlement of disputes

Any dispute between UNIDO 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 Director-General of UNIDO, one to be named by the Government and the third, who shall be the chairman, to be chosen by the first two; if either party fails to appoint an arbitrator within 60 days of the appointment by the other party, or if these two arbitrators should fail to agree on the third arbitrator within 60 days of their appointment, the President of the International Court of Justice may make any necessary appointments at the request of either party. However, any such dispute that involves a question regulated by the Convention on the Privileges and Immunities of the United Nations shall be dealt with in accordance with section 30 of that Convention.

(*n*) Grant agreement between the International Fund for Agricultural Development and the United Nations Industrial Development Organization (UNIDO) regarding the implementation of a project entitled "Pro Poor Value Chain Development Tool for Practitioners". 26 and 29 October 2009*

II. Terms and conditions

…

7. The personnel undertaking and responsible for effecting the activities related to this Agreement, shall not be considered staff members of IFAD, entitled to any privileges, immunities, compensation or reimbursement other than in accordance with their terms of employment with UNIDO, nor allowed to incur any commitments or expenses on behalf of IFAD.

8. Nothing in this Agreement or in any document relating thereto, shall be construed as constituting a waiver of privileges or immunities of IFAD or UNIDO.

9. The Fund shall not be held responsible for any accident, illness, loss or damage, which may be caused as a result of the Recipient carrying out of this Agreement.

(*o*) Standard letter of agreement between the Government of Botswana and the United Nations Industrial Development Organization under national execution regarding the implementation of a project in Botswana entitled "Review of the Industrial Development Policy". 6 November and 11 December 2009**

2. The designated institution recognises that UNIDO enjoys privileges and immunities under the Convention on the Privileges and Immunities of the Specialised Agencies.

…

* Entered into force on 1 December 2009.

** Entered into force on 11 December 2009.

20. Any dispute, controversy or claim arising from or relating to the interpretation or application of this agreement or any breach thereof (the "dispute") shall, unless amicably settled, be subject to non-binding conciliation in accordance with the UNCITRAL Conciliation Rules as at present in force. In the event that the dispute cannot be resolved through such conciliation, it shall be finally resolved through binding arbitration. The arbitration shall be conducted in accordance with the modalities to be agreed upon by the parties, or in the absence of agreement, with the Permanent Court of Arbitration Optional Rules for Arbitration Involving International Organizations and States. The arbitral tribunal will not have the power to impose general, incidental, indirect, special, punitive or consequential damages, including, without limitation, for lost profits. The parties will accept the arbitral award as final.

6. Organization for the Prohibition of Chemical Weapons

Agreement between the Organisation for the Prohibition of Chemical Weapons and the Republic of Serbia on the Privileges and Immunities of the OPCW*

Whereas article VIII, paragraph 48, of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction provides that the OPCW shall enjoy on the territory and in any other place under the jurisdiction or control of a State Party such legal capacity and such privileges and immunities as are necessary for the exercise of its functions;

Whereas article VIII, paragraph 49, of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction provides that delegates of States Parties, together with their alternates and advisers, representatives appointed to the Executive Council, together with their alternates and advisers, the Director-General and the staff of the Organisation shall enjoy such privileges and immunities as are necessary in the independent exercise of their functions in connection with the OPCW;

Whereas notwithstanding article VIII, paragraphs 48 and 49 of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, the privileges and immunities enjoyed by the Director-General and the staff of the Secretariat during the conduct of verification activities shall be those set forth in part II, section B, of the Verification Annex;

Whereas article VIII, paragraph 50, of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction specifies that such legal capacity, privileges and immunities are to be defined in agreements between the Organisation and the States Parties;

Now, therefore, the Organisation for the Prohibition of Chemical Weapons and the Republic of Serbia have agreed as follows:

Article 1. Definitions

In this Agreement:

* Entered into force on 15 July 2009, in accordance with article 12.

(*a*) "Convention" means the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction of 13 January 1993;

(*b*) "OPCW" means the Organisation for the Prohibition of Chemical Weapons, established under article VIII, paragraph 1, of the Convention;

(*c*) "Director-General" means the Director-General referred to in article VIII, paragraph 41, of the Convention, or in his absence, the acting Director-General;

(*d*) "Officials of the OPCW" means the Director-General and all members of the staff of the Secretariat of the OPCW;

(*e*) "State Party" means the State Party to this Agreement;

(*f*) "States Parties" means the States Parties to the Convention;

(*g*) "Representatives of States Parties" means the accredited heads of delegation of States Parties to the Conference of the States Parties and/or to the Executive Council or the Delegates to other meetings of the OPCW;

(*h*) "Experts" means persons who, in their personal capacity, are performing missions authorised by the OPCW, are serving on its organs, or who are, in any way, at its request, consulting with the OPCW;

(*i*) "Meetings convened by the OPCW" means any meeting of any of the organs or subsidiary organs of the OPCW, or any international conferences or other gatherings convened by the OPCW;

(*j*) "Property" means all property, assets and funds belonging to the OPCW or held or administered by the OPCW in furtherance of its functions under the Convention and all income of the OPCW;

(*k*) "Archives of the OPCW" means all records, correspondence, documents, manuscripts, computer and media data, photographs, films, video and sound recordings belonging to or held by the OPCW or any officials of the OPCW in an official function, and any other material which the Director-General and the State Party may agree shall form part of the archives of the OPCW;

(*l*) "Premises of the OPCW" are the buildings or parts of buildings, and the land ancillary thereto if applicable, used for the purposes of the OPCW, including those referred to in part II, subparagraph 11 (b), of the Verification Annex to the Convention.

Article 2. Legal personality

The OPCW shall possess full legal personality. In particular, it shall have the capacity:

(*a*) to contract;

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

(*c*) to institute and act in legal proceedings.

Article 3. Privileges and immunities of the OPCW

1. The OPCW and its property, wherever located and by whomsoever held, shall enjoy immunity from every form of legal process, except in so far as in any particular case

the OPCW has expressly waived its immunity. It is, however, understood that no waiver of immunity shall extend to any measure of execution.

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

3. The archives of the OPCW shall be inviolable, wherever located.

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

(*a*) the OPCW may hold funds, gold or currency of any kind and operate accounts in any currency;

(*b*) the OPCW may freely transfer its funds, securities, gold and currencies to or from the State Party, to or from any other country, or within the State Party, and may convert any currency held by it into any other currency.

5. The OPCW shall, in exercising its rights under paragraph 4 of this Article, pay due regard to any representations made by the Government of the State Party in so far as it is considered that effect can be given to such representations without detriment to the interests of the OPCW.

6. The OPCW and its property shall be:

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

(*b*) exempt from customs duties and prohibitions and restrictions on imports and exports in respect of articles imported or exported by the OPCW for its official use; it is understood, however, that articles imported under such exemption will not be sold in the State Party, except in accordance with conditions agreed upon with the State Party;

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

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

Article 4. Facilities and immunities in respect of communications and publications

1. For its official communications the OPCW shall enjoy, in the territory of the State Party and as far as may be compatible with any international conventions, regulations and arrangements to which the State Party adheres, treatment not less favourable than that accorded by the Government of the State Party to any other Government, including the latter's diplomatic mission, in the matter of priorities, rates and taxes for post and telecommunications, and press rates for information to the media.

2. No censorship shall be applied to the official correspondence and other official communications of the OPCW. The OPCW shall have the right to use codes and to dispatch and receive correspondence and other official communications by courier or in sealed bags, which shall have the same privileges and immunities as diplomatic couriers and bags. Nothing in this paragraph shall be construed to preclude the adoption of appropriate security precautions to be determined by agreement between the State Party and the OPCW.

3. The State Party recognises the right of the OPCW to publish and broadcast freely within the territory of the State Party for purposes specified in the Convention.

4. All official communications directed to the OPCW and all outward official communications of the OPCW, by whatever means or whatever form transmitted, shall be inviolable. Such inviolability shall extend, without limitation by reason of this enumeration, to publications, still and moving pictures, videos, films, sound recordings and software.

Article 5. Representatives of States Parties

1. Representatives of States Parties, together with alternates, advisers, technical experts and secretaries of their delegations, at meetings convened by the OPCW, shall, without prejudice to any other privileges and immunities which they may enjoy, while exercising their functions and during their journeys to and from the place of the meeting, enjoy the following privileges and immunities:

(*a*) immunity from personal arrest or detention;

(*b*) immunity from legal process of any kind in respect of words spoken or written and all acts done by them, in their official capacity; such immunity shall continue to be accorded, notwithstanding that the persons concerned may no longer be engaged in the performance of such functions;

(*c*) inviolability for all papers, documents and official material;

(*d*) the right to use codes and to dispatch or receive papers, correspondence or official material by courier or in sealed bags;

(*e*) exemption in respect of themselves and their spouses from immigration restrictions, alien registration or national service obligations while they are visiting or passing through the State Party in the exercise of their functions;

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

(*g*) the same immunities and facilities in respect of their personal baggage as are accorded to members of comparable rank of diplomatic missions.

2. Where the incidence of any form of taxation depends upon residence, periods during which the persons designated in paragraph 1 of this Article may be present in the territory of the State Party for the discharge of their duties shall not be considered as periods of residence.

3. The privileges and immunities are accorded to the persons designated in paragraph 1 of this Article in order to safeguard the independent exercise of their functions in connection with the OPCW and not for the personal benefit of the individuals themselves.

It is the duty of all persons enjoying such privileges and immunities to observe in all other respects the laws and regulations of the State Party.

4. The provisions of paragraphs 1 and 2 of this Article are not applicable in relation to a person who is a national of the State Party.

Article 6. Officials of the OPCW

1. During the conduct of verification activities, the Director-General and the staff of the Secretariat, including qualified experts during investigations of alleged use of chemical weapons referred to in Part XI, paragraphs 7 and 8 of the Verification Annex to the Convention, enjoy, in accordance with Article VIII, paragraph 51, of the Convention, the privileges and immunities set forth in Part II, Section B, of the Verification Annex to the Convention or, when transiting the territory of non-inspected States Parties, the privileges and immunities referred to in Part II, paragraph 12, of the same Annex.

2. For other activities related to the object and purpose of the Convention, officials of the OPCW shall:

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

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

(*c*) enjoy inviolability for all papers, documents and official material, subject to the provisions of the Convention;

(*d*) enjoy the same exemptions from taxation in respect of salaries and emoluments paid to them by the OPCW and on the same conditions as are enjoyed by officials of the United Nations;

(*e*) be exempt, together with their spouses, from immigration restrictions and alien registration;

(*f*) be given, together with their spouses, the same repatriation facilities in time of international crises as officials of comparable rank of diplomatic missions;

(*g*) be accorded the same privileges in respect of exchange facilities as are accorded to members of comparable rank of diplomatic missions.

3. The officials of the OPCW shall be exempt from national service obligations, provided that, in relation to nationals of the State Party, such exemption shall be confined to officials of the OPCW whose names have, by reason of their duties, been placed upon a list compiled by the Director-General of the OPCW and approved by the State Party. Should other officials of the OPCW be called up for national service by the State Party, the State Party shall, at the request of the OPCW, grant such temporary deferments in the call-up of such officials as may be necessary to avoid interruption in the continuation of essential work.

4. In addition to the privileges and immunities specified in paragraphs 1, 2 and 3 of this Article, the Director-General of the OPCW shall be accorded on behalf of himself and his spouse, the privileges and immunities, exemptions and facilities accorded to diplomatic agents on behalf of themselves and their spouses, in accordance with international law.

The same privileges and immunities, exemptions and facilities shall also be accorded to a senior official of the OPCW acting on behalf of the Director-General.

5. Privileges and immunities are granted to officials of the OPCW in the interests of the OPCW, and not for the personal benefit of the individuals themselves. It is the duty of all persons enjoying such privileges and immunities to observe in all other respects the laws and regulations of the State Party. The OPCW shall have the right and the duty to waive the immunity of any official of the OPCW in any case where, in its opinion, the immunity would impede the course of justice and can be waived without prejudice to the interests of the OPCW.

6. The OPCW shall cooperate at all times with the appropriate authorities of the State Party to facilitate the proper administration of justice, and shall secure the observance of police regulations and prevent the occurrence of any abuse in connection with the privileges, immunities and facilities mentioned in this Article.

Article 7. Experts

1. Experts shall be accorded the following privileges and immunities so far as is necessary for the effective exercise of their functions, including the time spent on journeys in connection with such functions.

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

(*b*) in respect of words spoken or written or acts done by them in the performance of their official functions, immunity from legal process of every kind, such immunity to continue notwithstanding that the persons concerned are no longer performing official functions for the OPCW;

(*c*) inviolability for all papers, documents and official material;

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

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

(*f*) the same immunities and facilities in respect of their personal baggage as are accorded to members of comparable rank of diplomatic missions.

2. The privileges and immunities are accorded to experts in the interests of the OPCW and not for the personal benefit of the individuals themselves. It is the duty of all persons enjoying such privileges and immunities to observe in all other respects the laws and regulations of the State Party. The OPCW shall have the right and the duty to waive the immunity of any expert in any case where, in its opinion, the immunity would impede the course of justice and can be waived without prejudice to the interests of the OPCW.

Article 8. Abuse of privilege

1. If the State Party considers that there has been an abuse of a privilege or immunity conferred by this Agreement, consultations shall be held between the State Party and the OPCW to determine whether any such abuse has occurred and, if so, to attempt to ensure that no repetition occurs. If such consultations fail to achieve a result satisfactory to

the State Party and the OPCW, the question whether an abuse of a privilege or immunity has occurred shall be settled by a procedure in accordance with Article 10.

2. Persons included in one of the categories under Articles 6 and 7 shall not be required by the territorial authorities to leave the territory of the State Party on account of any activities by them in their official capacity. In the case, however, of abuse of privileges committed by any such person in activities outside official functions, the person may be required to leave by the Government of the State Party, provided that the order to leave the country has been issued by the territorial authorities with the approval of the Foreign Minister of the State Party. Such approval shall be given only in consultation with the Director-General of the OPCW. If expulsion proceedings are taken against the person, the Director-General of the OPCW shall have the right to appear in such proceedings on behalf of the person against whom they are instituted.

Article 9. Travel documents and visas

1. The State Party shall recognise and accept as valid the United Nations *laissez-passer* issued to the officials of the OPCW, in accordance with special OPCW arrangements, for the purpose of carrying out their tasks related to the Convention. The Director-General shall notify the State Party of the relevant OPCW arrangements.

2. The State Party shall take all necessary measures to facilitate the entry into and sojourn in its territory and shall place no impediment in the way of the departure from its territory of the persons included in one of the categories under Articles 5, 6 and 7 above, whatever their nationality, and shall ensure that no impediment is placed in the way of their transit to or from the place of their official duty or business and shall afford them any necessary protection in transit.

3. Applications for visas and transit visas, where required, from persons included in one of the categories under Articles 5, 6 and 7, when accompanied by a certificate that they are travelling in their official capacity, shall be dealt with as speedily as possible to allow those persons to effectively discharge their functions. In addition, such persons shall be granted facilities for speedy travel.

4. The Director-General, the Deputy Director(s)-General and other officials of the OPCW, travelling in their official capacity, shall be granted the same facilities for travel as are accorded to members of comparable rank in diplomatic missions.

5. For the conduct of verification activities visas are issued in accordance with paragraph 10 of Part II, Section B, of the Verification Annex to the Convention.

Article 10. Settlement of disputes

1. The OPCW shall make provision for appropriate modes of settlement of:

(*a*) disputes arising out of contracts or other disputes of a private law character to which the OPCW is a party;

(*b*) disputes involving any official of the OPCW or expert who, by reason of his official position, enjoys immunity, if such immunity has not been waived in accordance with Article 6, paragraph 5, or Article 7, paragraph 2, of this Agreement.

2. Any dispute concerning the interpretation or application of this Agreement, which is not settled amicably, shall be referred for final decision to a tribunal of three

arbitrators, at the request of either party to the dispute. Each party shall appoint one arbitrator. The third, who shall be chairman of the tribunal, is to be chosen by the first two arbitrators.

3. If one of the parties fails to appoint an arbitrator and has not taken steps to do so within two months following a request from the other party to make such an appointment, the other party may request the President of the International Court of Justice to make such an appointment.

4. Should the first two arbitrators fail to agree upon the third within two months following their appointment, either party may request the President of the International Court of Justice to make such appointment.

5. The tribunal shall conduct its proceedings in accordance with the Permanent Court of Arbitration Optional Rules for Arbitration Involving International Organisations and States, as in force on the date of entry into force of this Agreement.

6. The tribunal shall reach its decision by a majority of votes. Such decision shall be final and binding on the parties to the dispute.

Article 11. Interpretation

1. The provisions of this Agreement shall be interpreted in the light of the functions which the Convention entrusts to the OPCW.

2. The provisions of this Agreement shall in no way limit or prejudice the privileges and immunities accorded to members of the inspection team in Part II, Section B, of the Verification Annex to the Convention or the privileges and immunities accorded to the Director-General and the staff of the Secretariat of the OPCW in Article VIII, paragraph 51, of the Convention. The provisions of this Agreement shall not themselves operate so as to abrogate, or derogate from, any provisions of the Convention or any rights or obligations which the OPCW may otherwise have, acquire or assume.

Article 12. Final provisions

1. This Agreement shall enter into force on the date of deposit with the Director-General of an instrument of ratification of the State Party. It is understood that, when an instrument of ratification is deposited by the State Party it will be in a position under its own law to give effect to the terms of this Agreement.

2. This Agreement shall continue to be in force for so long as the State Party remains a State Party to the Convention.

3. The OPCW and the State Party may enter into such supplemental agreements as may be necessary.

4. Consultations with respect to amendment of this Agreement shall be entered into at the request of the OPCW or the State Party. Any such amendment shall be by mutual consent expressed in an agreement concluded by the OPCW and the State Party.

Done in The Hague in duplicate on 7 March 2008, in the English language.

7. International Criminal Court

Headquarters Agreement between the International Criminal Court and the Host State*

The International Criminal Court and the Kingdom of the Netherlands,

Whereas the Rome Statute of the International Criminal Court adopted on 17 July 1998 by the United Nations Diplomatic Conference of Plenipotentiaries established the International Criminal Court with power to exercise its jurisdiction over persons for the most serious crimes of international concern;

Whereas article 3, paragraphs 1 and 2, of the Rome Statute respectively provide that the seat of the Court shall be established at The Hague in the Netherlands and that the Court shall enter into a headquarters agreement with the host State, to be approved by the Assembly of States Parties and thereafter concluded by the President of the Court on its behalf;

Whereas article 4 of the Rome Statute provides that the Court shall have international legal personality and such legal capacity as may be necessary for the exercise of its functions and the fulfilment of its purposes;

Whereas article 48 of the Rome Statute provides that the Court shall enjoy in the territory of each State Party such privileges and immunities as are necessary for the fulfilment of its purposes;

Whereas article 103, paragraph 4, of the Rome Statute provides that, if no State is designated under paragraph 1 of that article, sentences of imprisonment shall be served in a prison facility made available by the host State in accordance with the conditions set out in the headquarters agreement;

Whereas the Assembly of States Parties, at the third meeting of its first session held from 3 to 10 September 2002, adopted Basic principles governing a headquarters agreement to be negotiated between the Court and the host country, and adopted the Agreement on Privileges and Immunities of the International Criminal Court;

Whereas the Court and the host State wish to conclude an agreement to facilitate the smooth and efficient functioning of the Court in the host State;

Have agreed as follows:

Chapter I. General Provisions

Article 1. Use of Terms

For the purpose of this Agreement:

(*a*) "the Statute" means the Rome Statute of the International Criminal Court adopted on 17 July 1998 by the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court;

(*b*) "the Court" means the International Criminal Court established by the Statute; for the purpose of this Agreement, the Secretariat shall be an integral part of the Court;

* Entered into force on 1 March 2009 in accordance with article 58.

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

(*d*) "the parties" means the Court and the host State;

(*e*) "States Parties" means States Parties to the Statute;

(*f*) "representatives of States" means all delegates, deputy delegates, advisers, technical experts, secretaries, and any other accredited members of delegations;

(*g*) "the Assembly" means the Assembly of States Parties;

(*h*) "the Bureau" means the Bureau of the Assembly;

(*i*) "subsidiary bodies" means the bodies established by the Assembly or the Bureau;

(*j*) "the officials of the Court" means the judges, the Prosecutor, the Deputy Prosecutors, the Registrar, the Deputy Registrar and staff of the Court;

(*k*) "the judges" means the judges of the Court elected by the Assembly in accordance with article 36, paragraph 6, of the Statute;

(*l*) "the Presidency" means the organ composed of the President and the First and Second Vice-Presidents of the Court in accordance with article 38, paragraph 3, of the Statute;

(*m*) "the President" means the President of the Court elected by the judges in accordance with article 38, paragraph 1, of the Statute;

(*n*) "the Prosecutor" means the Prosecutor elected by the Assembly in accordance with article 42, paragraph 4, of the Statute;

(*o*) "the Deputy Prosecutors" means the Deputy Prosecutors elected by the Assembly in accordance with article 42, paragraph 4, of the Statute;

(*p*) "the Registrar" means the Registrar elected by the judges in accordance with article 43, paragraph 4, of the Statute;

(*q*) "the Deputy Registrar" means the Deputy Registrar elected by the judges in accordance with article 43, paragraph 4, of the Statute;

(*r*) "staff of the Court" means the staff of the Registry and the Office of the Prosecutor as referred to in article 44 of the Statute. Staff of the Registry includes staff of the Presidency and of Chambers, and staff of the Secretariat;

(*s*) "the Secretariat" means the Secretariat of the Assembly established by resolution ICC-ASP/2/Res.3 of 12 September 2003;

(*t*) "interns" means graduates or postgraduates who, not being members of staff of the Court, have been accepted by the Court into the internship programme of the Court for the purpose of performing certain tasks for the Court without receiving a salary from the Court;

(*u*) "visiting professionals" means persons who, not being members of staff of the Court, have been accepted by the Court into the visiting professional programme of the Court for the purpose of providing expertise and performing certain tasks for the Court without receiving a salary from the Court;

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

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

(*x*) "the premises of the Court" means buildings, parts of buildings and areas, including installations and facilities made available to, maintained, occupied or used by the Court in the host State in connection with its functions and purposes, including detention of a person, or in connection with meetings of the Assembly, including its Bureau and subsidiary bodies;

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

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

(*aa*) "the Agreement on Privileges and Immunities of the Court" means the Agreement on Privileges and Immunities of the International Criminal Court referred to in article 48 of the Statute and adopted at the third meeting of the first session of the Assembly held from 3 to 10 September 2002 at the United Nations Headquarters in New York;

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

(*cc*) "the Rules of Procedure and Evidence" means the Rules of Procedure and Evidence adopted in accordance with article 51 of the Statute.

Article 2. Purpose and scope of this Agreement

This Agreement shall regulate matters relating to or arising out of the establishment and the proper functioning of the Court in the host State. It shall, *inter alia*, provide for the long-term stability and independence of the Court and facilitate its smooth and efficient functioning, including, in particular, its needs with regard to all persons required by the Court to be present at its seat and with regard to the transfer of information, potential evidence and evidence into and out of the host State. This Agreement shall also regulate matters relating to or arising out of the establishment and proper functioning of the Secretariat in the host State, and its provisions shall apply, *mutatis mutandis*, to the Secretariat.

This Agreement shall, as appropriate, regulate matters relating to the Assembly, including its Bureau and subsidiary bodies.

Chapter II. Status of the Court

Article 3. Legal status and juridical personality of the Court

The Court shall have international legal personality in accordance with article 4, paragraph 1, of the Statute, and shall also have such legal capacity as may be necessary for the exercise of its functions and the fulfilment of its purposes. It shall, in particular, have the capacity to contract, to acquire and to dispose of immovable and movable property and to participate in legal proceedings.

Article 4. Freedom of assembly

1. The host State guarantees to the Assembly, including its Bureau and subsidiary bodies, full freedom of assembly, including freedom of discussion, decision and publication.

2. The host State shall take all necessary measures to ensure that no impediment is placed in the way of conducting meetings convened by the Assembly, including its Bureau and subsidiary bodies.

Article 5. Privileges, immunities and facilities of the Court

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

Article 6. Inviolability of the premises of the Court

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

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

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

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

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

Article 7. Protection of the premises of the Court and their vicinity

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

2. If so requested by the Registrar, the competent authorities shall provide adequate police force necessary for the preservation of law and order on the premises of the Court or in the immediate vicinity thereof, and for the removal of persons therefrom.

3. The competent authorities shall take all reasonable steps to ensure that the amenities of the premises of the Court are not prejudiced and that the purposes for which the

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

Article 8. Law and authority on the premises of the Court

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

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

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

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

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

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

7. Any dispute between the Court and the host State as to whether rules of the Court come within the ambit of this provision or as to whether laws or regulations of the host State are inconsistent with rules of the Court under this provision shall promptly be settled by the procedure set out in article 55 of this Agreement. Pending such settlement, the rule of the Court shall apply and the law and/or regulation of the host State shall be inapplicable on the premises of the Court to the extent that the Court claims it to be inconsistent with its rules.

Article 9. Public services for the premises of the Court

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

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

3. In case of any interruption or threatened interruption of any such services, the Court shall be accorded the priority given to essential agencies and organs of the host

State, and the host State shall take steps accordingly to ensure that the work of the Court is not prejudiced.

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

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

Article 10. Flag, emblem and markings

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

Article 11. Funds, assets and other property

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

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

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

Article 12. Inviolability of archives, documents and materials

The archives of the Court, and all papers and documents in whatever form, and materials being sent to or from the Court, held by the Court or belonging to it, wherever located and by whomsoever held, shall be inviolable. The termination or absence of such inviolability shall not affect protective measures that the Court may order pursuant to the Statute and the Rules of Procedure and Evidence with regard to documents and materials made available to or used by the Court.

Article 13. Facilities in respect of communications

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

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

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

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

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

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

Article 14. Freedom of financial assets from restrictions

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

(*a*) purchase any currencies through authorized channels and hold and dispose of them;

(*b*) operate accounts in any currency;

(*c*) purchase through authorized channels, hold and dispose of funds, securities and gold;

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

(*e*) raise funds in any manner which it deems desirable, except that with respect to the raising of funds within the host State, the Court shall obtain the concurrence of the competent authorities.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3. The exemptions provided for in paragraph 2, subparagraphs (d), (e), (f), (g), (h), (i) and (j) of this article may be granted by way of a refund.

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

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

Article 16. Exemption from import and export restrictions

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

Chapter III. Privileges, immunities and facilities accorded to persons under this Agreement

Article 17. Privileges, immunities and facilities of judges, the Prosecutor, the Deputy Prosecutors and the Registrar

1. The judges, the Prosecutor, the Deputy Prosecutors and the Registrar shall enjoy privileges, immunities and facilities in the host State when engaged on or with respect to the business of the Court. They shall, *inter alia*, enjoy:

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

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

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

(*d*) exemption from national service obligations;

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

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

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

(*h*) together with members of their family forming part of their household, the same immunities and facilities in respect of their personal baggage as are accorded to diplomatic agents;

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

(*j*) together with members of their family forming part of their household, the right of unimpeded entry into, exit from or movement within the host State, as appropriate and for purposes of the Court.

2. In addition to the privileges, immunities and facilities listed in paragraph 1 of this article and the privileges and immunities that apply in accordance with article 48, paragraph 2, of the Statute, the judges, the Prosecutor, the Deputy Prosecutors and the Registrar, together with members of their family forming part of their household who do not have Netherlands nationality or permanent residence status in the host State, shall enjoy the same privileges, immunities and facilities as are accorded by the host State to heads of diplomatic missions in conformity with the Vienna Convention.

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

4. Paragraphs 1, 2 and 3 of this article shall also apply to judges of the Court who continue to be in office in accordance with article 36, paragraph 10, of the Statute.

5. The judges, the Prosecutor, the Deputy Prosecutors and the Registrar shall, after the expiry of their terms of office, continue to be accorded immunity from legal process of every kind in respect of words which had been spoken or written and acts which had been performed by them in their official capacity.

6. The host State shall not be obliged to exempt from income tax pensions or annuities paid to former judges, Prosecutors, Deputy Prosecutors, and Registrars and their dependants.

7. Without prejudice to paragraphs 1 (f) and 3 of this article, persons referred to in this article who are nationals or permanent residents of the host State shall enjoy only the following privileges, immunities and facilities to the extent necessary for the independent performance of their functions:

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

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

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

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

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

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

Article 18. Privileges, immunities and facilities of the Deputy Registrar and staff of the Court

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

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

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

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

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

(*e*) exemption from national service obligations;

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

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

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

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

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

2. Staff of the Court of P-5 level and above, and such additional categories of staff of the Court as may be designated, in agreement with the host State, by the Registrar, in consultation with the President and the Prosecutor, together with members of their family forming part of their household who are not nationals or permanent residents of the host

State, shall be accorded the same privileges, immunities and facilities as the host State accords to diplomatic agents of comparable rank of the diplomatic missions established in the host State in conformity with the Vienna Convention.

3. Staff of the Court of P-4 level and below shall be accorded the same privileges, immunities and facilities as the host State accords to members of the administrative and technical staff of diplomatic missions established in the host State, in conformity with the Vienna Convention, provided that the immunity from criminal jurisdiction and personal inviolability shall not extend to acts performed outside the course of their official duties.

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

5. The host State shall not be obliged to exempt from income tax pensions or annuities paid to former Deputy Registrars, members of staff of the Court and their dependants.

6. Without prejudice to paragraphs 1(d) and 4 of this article, persons referred to in this article who are nationals or permanent residents of the host State shall enjoy only the following privileges, immunities and facilities to the extent necessary for the independent performance of their functions:

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

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

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

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

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

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

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

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

Article 20. Employment of family members of officials of the Court

1. Members of the family forming part of the household of any official of the Court shall be authorized to engage in gainful employment in the host State for the duration of the term of office of the official of the Court concerned.

2. The following persons shall be authorized to engage in gainful employment in the host State:

(*a*) the spouses or registered partners of officials of the Court,

(*b*) children of officials of the Court who are under the age of 18;

(*c*) children of the officials of the Court aged 18 or over, but not older than 27, provided that they formed part of the household prior to their first entry into the host State and still form part of this household, and that they are unmarried, financially dependent on the official of the Court concerned and are attending an educational institution in the host State;

(*d*) any other persons who, in exceptional cases or for humanitarian reasons, the Court and the host State agree to treat as members of the family forming part of the household.

3. Persons mentioned in paragraph 2 of this article who obtain gainful employment shall enjoy no immunity from criminal, civil or administrative jurisdiction with respect to matters arising in the course of or in connection with such employment. However, any measures of execution shall be taken without infringing the inviolability of their person or of their residence, if they are entitled to such inviolability.

4. In case of the insolvency of a person aged under 18 with respect to a claim arising out of gainful employment of that person, the immunity of officials of the Court of whose family the person concerned is a member shall be waived for the purpose of settlement of the claim, in accordance with the provisions of article 30 of this Agreement.

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

Article 21. Representatives of States participating in the proceedings of the Court

1. Representatives of States participating in the proceedings of the Court shall, while performing their official functions in the host State, enjoy the following privileges, immunities and facilities:

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

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

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

(*d*) the right to use codes or cipher, to receive papers and documents or correspondence by courier or in sealed bags and to receive and send electronic communications;

(*e*) exemption from immigration restrictions, alien registration requirements and national service obligations;

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

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

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

(*i*) such other privileges, immunities and facilities not inconsistent with the foregoing as diplomatic agents enjoy, except that they shall have no right to claim exemption from customs duties on goods imported (otherwise as part of their personal baggage) or from excise duties or sales taxes.

2. Where the incidence of any form of taxation depends upon residence, periods during which the representatives referred to in paragraph 1 of this article are present in the host State for the discharge of their functions shall not be considered as periods of residence.

3. The provisions of paragraphs 1 and 2 of this article are not applicable as between a representative and the authorities of the host State if he or she is a national or permanent resident of the host State or if he or she is or has been a representative of the host State.

4. Representatives of States referred to in paragraph 1 of this article shall not be subjected by the host State to any measure which may affect the free and independent performance of their functions before the Court.

Article 22. Representatives of States participating in the Assembly and its subsidiary bodies and representatives of intergovernmental organizations

Representatives of States Parties attending meetings of the Assembly, of the Bureau and of subsidiary bodies, representatives of other States that may be attending such meetings as observers in accordance with article 112, paragraph 1, of the Statute, and representatives of States and of intergovernmental organizations invited to such meetings shall, while performing their official functions and during their journey to and from the place of meeting, enjoy the privileges, immunities and facilities referred to in article 21 of this Agreement.

Article 23. Members of the Bureau and of subsidiary bodies

The provisions of article 21 of this Agreement shall be applicable, *mutatis mutandis*, to members of the Bureau and members of subsidiary bodies of the Assembly whose presence is required in the host State, in connection with the work of the Assembly, including its Bureau and subsidiary bodies.

Article 24. Interns and visiting professionals

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

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

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

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

(*c*) the intern or visiting professional will not work in the host State during his or her internship or visiting professional programme other than as an intern or a visiting professional for the Court;

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

(*e*) the intern or visiting professional will leave the host State within fifteen days after the end of the internship or visiting professional programme.

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

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

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

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

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

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

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

Article 25. Counsel and persons assisting counsel

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6. The provisions of this article shall apply, *mutatis mutandis*, to persons assisting counsel in accordance with rule 22 of the Rules of Procedure and Evidence.

Article 26. Witnesses

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Article 27. Victims

1. Victims participating in the proceedings in accordance with rules 89 to 91 of the Rules of Procedure and Evidence shall enjoy the following privileges, immunities and facilities to the extent necessary for their appearance before the Court, subject to the production of the document referred to in paragraph 2 of this article:

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

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

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

(*d*) inviolability of all papers, documents in whatever form and materials relating to their participation in proceedings before the Court;

(*e*) exemption from immigration restrictions or alien registration when they travel to and from the Court for purposes of their appearance.

2. Victims shall be provided by the Court with a document certifying their participation in the proceedings of the Court and specifying a time period for that participation. Such document shall be withdrawn prior to its expiry if the victim is no longer participating in the proceedings of the Court, or if the victim's presence at the seat of the Court is no longer required.

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

4. Victims who are nationals or permanent residents of the host State shall enjoy no privileges, immunities and facilities, except, to the extent necessary for their appearance before the Court, immunity from legal process in respect of words spoken or written and all acts performed by them in the course of their appearance before the Court, which immunity shall continue to be accorded even after their appearance before the Court.

5. Victims shall not be subjected by the host State to any measure which may affect their appearance before the Court.

Article 28. Experts

1. Experts, including gratis personnel, performing functions for the Court shall be accorded the following privileges, immunities and facilities to the extent necessary for the independent performance of their functions, subject to production of the document referred to in paragraph 2 of this article:

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

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

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

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

(*e*) for the purposes of their communications with the Court, the right to receive and send papers and documents in whatever form and materials relating to the performance of their functions for the Court by courier or in sealed bags;

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

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

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

(*i*) exemption from immigration restrictions or alien registration in relation to their functions as specified in the document referred to in paragraph 2 of this article.

2. Experts shall be provided by the Court with a document certifying that they are performing functions for the Court and specifying a time period for which their functions will last. Such document shall be withdrawn prior to its expiry if the expert is no longer performing functions for the Court, or if the expert's presence at the seat of the Court is no longer required.

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

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

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

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

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

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

5. Experts shall not be subjected by the host State to any measure which may affect the independent performance of their functions for the Court.

6. This article shall apply, *mutatis mutandis*, to experts of the Assembly, including its Bureau and subsidiary bodies, whose presence is required in the host State, in connection with the work of the Assembly, including its Bureau and subsidiary bodies.

Article 29. Other persons required to be present at the seat of the Court

1. Other persons required to be present at the seat of the Court shall, to the extent necessary for their presence at the seat of the Court, be accorded the privileges, immunities and facilities provided for in article 27 of this Agreement, subject to production of the document referred to in paragraph 2 of this article.

2. Persons referred to in this article shall be provided by the Court with a document certifying that their presence is required at the seat of the Court and specifying a time period during which such presence is necessary. Such document shall be withdrawn prior to its expiry if their presence at the seat of the Court is no longer required.

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

4. Persons referred to in this article who are nationals or permanent residents of the host State shall enjoy no privileges, immunities and facilities, except, to the extent necessary for their presence at the seat of the Court, immunity from legal process in respect of words spoken or written and all acts performed by them in the course of their presence at the seat of the Court. Such immunity shall continue to be accorded even after their presence at the seat of the Court is no longer required.

5. Persons referred to in this article shall not be subjected by the host State to any measures which may affect their presence before the Court.

Chapter IV. Waiver of privileges and immunities

Article 30. Waiver of privileges, immunities and facilities provided for in articles 17, 18, 19, 24, 25, 26, 27, 28 and 29

1. The privileges, immunities and facilities provided for in articles 17, 18, 19, 24, 25, 26, 27, 28 and 29 of this Agreement are granted in the interests of the good administration of justice and not for the personal benefit of the individuals themselves. Such privileges and immunities may be waived in accordance with article 48, paragraph 5, of the Statute and

the provisions of this article and there is a duty to do so in any particular case where they would impede the course of justice and can be waived without prejudice to the purpose for which they are accorded.

2. The privileges, immunities and facilities may be waived:

(*a*) by an absolute majority of the judges:

(i) in the case of a judge or the Prosecutor;

(*b*) by the Presidency:

(i) in the case of the Registrar;

(ii) in the case of counsel and persons assisting counsel;

(iii) in the case of witnesses and victims; or

(iv) in the case of other persons required to be present at the seat of the Court;

(*c*) by the Prosecutor:

(i) in the case of the Deputy Prosecutors and staff of the Office of the Prosecutor; or

(ii) in the case of interns and visiting professionals of the Office of the Prosecutor;

(*d*) by the Registrar:

(i) in the case of the Deputy Registrar and staff of the Registry;

(ii) in the case of interns and visiting professionals not covered by paragraph 2 (c) (ii) and (g) of this article;

(*e*) by the head of the organ of the Court with which they are employed, in the case of personnel referred to in article 19 of this Agreement;

(*f*) by the President of the Assembly, in the case of the Director of the Secretariat;

(*g*) by the Director of the Secretariat, in the case of staff, experts, interns and visiting professionals of the Secretariat;

(*h*) by the head of the organ of the Court appointing the expert, in the case of experts.

Article 31. Waiver of privileges, immunities and facilities of representatives of States and members of the Bureau provided for in articles 21, 22 and 23

Privileges, immunities and facilities provided for in articles 21, 22 and 23 of this Agreement are accorded to the representatives of States, members of the Bureau and intergovernmental organizations not for the personal benefit of the individuals themselves, but in order to safeguard the independent performance of their functions in connection with the work of the Assembly, including its Bureau and subsidiary bodies, and the Court. Consequently, States Parties to the Agreement on Privileges and Immunities of the Court not only have the right but are under a duty to waive the privileges, immunities and facilities of their representatives in any case where, in the opinion of those States, they would impede the course of justice and can be waived without prejudice to the purpose for which the privileges, immunities and facilities are accorded. States not party to the Agreement on

Privileges and Immunities of the Court and intergovernmental organizations are granted the privileges, immunities and facilities provided for in articles 21, 22 and 23 of this Agreement on the understanding that they undertake the same duty regarding waiver.

Article 32. Waiver of privileges, immunities and facilities of members of subsidiary bodies and of experts for the Assembly, including its Bureau and subsidiary bodies, provided for in articles 23 and 28, paragraph 6

Privileges, immunities and facilities provided for in articles 23 and 28, paragraph 6 of this Agreement are accorded to the members of subsidiary bodies and to experts, respectively, not for the personal benefit of the individuals themselves, but in order to safeguard the independent performance of their functions in connection with the work of the Assembly, including its Bureau and subsidiary bodies, and the Court. Consequently, the President of the Assembly not only has the right but is under a duty to waive the privileges, immunities and facilities of the members of subsidiary bodies or of experts in any case where, in the opinion of the President of the Assembly, they would impede the course of justice and can be waived without prejudice to the purpose for which they are accorded.

Chapter V. Cooperation between the Court and the host State

Section 1. General

Article 33. General cooperation between the Court and the host State

1. Whenever this Agreement imposes obligations on the competent authorities, the ultimate responsibility for the fulfilment of such obligations shall rest with the Government of the host State.

2. The host State shall promptly inform the Court of the office designated to serve as the official contact point and to be primarily responsible for all matters in relation to this Agreement, as well as of any subsequent changes in this regard.

3. Without prejudice to the powers of the Prosecutor under article 42, paragraph 2, of the Statute, the Registrar, or a member of staff of the Court designated by him or her, shall serve as the official contact point for the host State, and shall be primarily responsible for all matters in relation to this Agreement. The host State shall be informed promptly about this designation and of any subsequent changes in this regard.

4. The Court will use its best efforts, without prejudice to the functions and powers of the Assembly, including its Bureau and subsidiary bodies, to facilitate the observance of articles 21, 22, 23, 31 and 32 of this Agreement.

5. Communications relating to the Assembly and the host State regarding the waiver of privileges, immunities and facilities referred to in article 32 of this Agreement shall be conveyed through the Secretariat.

Article 34. Cooperation with the competent authorities

1. The Court shall cooperate with the competent authorities to facilitate the enforcement of the laws of the host State, to secure the observance of police regulations and to prevent the occurrence of any abuse in connection with the privileges, immunities and facilities accorded under this Agreement.

2. The Court and the host State shall cooperate on security matters, taking into account the public order and national security of the host State.

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

4. The Court shall cooperate with the competent authorities responsible for health, safety at work, electronic communications and fire prevention.

5. The Court shall observe all security directives as agreed with the host State, as well as all directives of the competent authorities responsible for fire prevention regulations.

6. The host State will use its best efforts to notify the Court of any proposed or enacted national laws and regulations having a direct impact on the privileges, immunities, facilities, rights and obligations of the Court and its officials. The Court shall have the right to provide observations as to proposed national laws and regulations.

Article 35. Notification

1. The Court shall promptly notify the host State of:

(*a*) the appointment of its officials, their arrival and their final departure or the termination of their functions with the Court;

(*b*) the arrival and final departure of members of the family forming part of the household of the persons referred to in subparagraph 1 (a) of this article and, where appropriate, the fact that a person has ceased to form part of the household;

(*c*) the arrival and final departure of private or domestic servants of persons referred to in subparagraph 1 (a) of this article and, where appropriate, the fact that they are leaving the employ of such persons.

2. The host State shall issue to the officials of the Court and to members of their family forming part of their household and to private or domestic servants an identity card bearing the photograph of the holder. This card shall serve to identify the holder in relation to the competent authorities.

3. At the final departure of the persons referred to in paragraph 2 of this article or when these persons have ceased to perform their functions, the identity card referred to in paragraph 2 of this article shall be promptly returned by the Court to the Ministry of Foreign Affairs.

Article 36. Social security regime

1. The social security system of the Court offers coverage comparable to the coverage under the legislation of the host State. Accordingly, the Court and its officials to whom the aforementioned scheme applies shall be exempt from social security provisions of the host State. Consequently, such officials shall not be covered against the risks described in the social security provisions of the host State. This exemption applies to such officials, unless they take up gainful activity in the host State.

2. Paragraph 1 of this article shall apply, *mutatis mutandis*, to members of the family forming part of the household of the persons referred to in paragraph 1, unless they are

engaged in gainful employment in the host State, or are self-employed, or receive social security benefits from the host State.

Section 2. Visas, permits and other documents

Article 37. Visas for the officials of the Court, visas for representatives of States participating in the proceedings of the Court, and visas for counsel and persons assisting counsel

1. The officials of the Court, representatives of States participating in the proceedings of the Court, and counsel and persons assisting counsel, as notified as such by the Registrar to the host State, shall have the right of unimpeded entry into, exit from and movement within the host State including unimpeded access to the premises of the Court.

2. Visas, where required, shall be granted free of charge and as promptly as possible.

3. Applications for visas where required from members of the family forming part of the household of the persons referred to in paragraph 1 of this article shall be processed by the host State as promptly as possible and granted free of charge.

Article 38. Visas for witnesses, victims, experts, interns, visiting professionals and other persons required to be present at the seat of the Court

1. All persons referred to in articles 24, 26, 27, 28 and 29 of this Agreement, as notified as such by the Registrar to the host State, shall have the right of unimpeded entry into, exit from and, subject to paragraph 3 of this article, movement within the host State, as appropriate and for the purposes of the Court.

2. Visas, where required, shall be granted free of charge and as promptly as possible. The same facilities shall be accorded to persons accompanying witnesses and victims, who have been notified as such by the Registrar to the host State.

3. The host State may attach such conditions or restrictions to the visa as may be necessary to prevent violations of its public order or to protect the safety of the person concerned.

4. Before applying paragraph 3 of this article, the host State will seek observations from the Court.

Article 39. Visas for visitors of persons detained by the Court

1. The host State shall make adequate arrangements by which visas for visitors of persons detained by the Court are processed promptly. Visas for visitors who are family members of a person detained by the Court shall be processed promptly and, where appropriate, free of charge or for a reduced fee.

2. Visas for the visitors referred to in paragraph 1 of this article may be subjected to territorial limitations. Visas may be refused in the event that:

(*a*) the visitors referred to in paragraph 1 of this article cannot produce documents justifying the purpose and conditions of the intended stay and demonstrating that they have sufficient means of subsistence, both for the period of the intended stay and for the

return to the country of origin or transfer to a third State into which they are certain to be admitted, or that they are in a position to acquire such means lawfully;

(*b*) an alert has been issued against them for the purpose of refusing entry; or

(*c*) they must be considered a threat to public order, national security or the international relations of any of the Contracting Parties to the Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the Gradual Abolition of Checks at their Common Borders.

3. The host State may attach such conditions or restrictions to the visa as may be necessary to prevent violations of its public order or to protect the safety of the person concerned.

4. Before applying paragraph 2 or 3 of this article, the host State will seek observations from the Court.

Article 40. Independent bodies of counsel or legal associations, journalists and non-governmental organizations

1. The parties recognize the role of:

(*a*) independent representative bodies of counsel or legal associations, including any such body the establishment of which may be facilitated by the Assembly of States Parties in accordance with rule 20, sub-rule 3, of the Rules of Procedure and Evidence;

(*b*) press, radio, film, television or other information media reporting on the Court; and

(*c*) non-governmental organizations that support the fulfilment of the mandate of the Court.

2. The host State shall take all necessary measures to facilitate the entry into, stay and employment in the host State of representatives of bodies or organizations referred to in paragraph 1 of this article, deployed in, or visiting the host State in connection with activities relating to the Court. The host State shall also take all necessary measures to facilitate the entry into and stay of members of the family forming part of the household of such representatives who are deployed in the host State.

3. For the purpose of facilitating the procedure of entry into, stay and employment in the host State of the representatives of bodies or organizations referred to in paragraph 1 of this article, the host State and the Court shall consult, as appropriate, with each other, and with any independent representative bodies of counsel or legal associations, media, or non-governmental organizations. Each of the groups referred to in paragraph 1 of this article shall promptly inform the host State and the Court of the office designated to serve as the official contact point of that group for such consultations, and of any subsequent changes in this regard.

4. Following the consultations referred to in paragraph 3 of this article, the Court shall, on the basis of verifiable information available to it, indicate whether the representative concerned may be regarded as representing a body or organization referred to in paragraph 1 of this article

5. The host State may attach such conditions or restrictions to the visas as are necessary to prevent violations of its public order or to protect the safety of the person concerned.

6. Visas and residence permits shall be granted to persons referred to in this article in accordance with the relevant laws and regulations of the host State, taking into account the obligations of the host State referred to in paragraph 2 of this article.

7. Visas and residence permits granted in accordance with this article shall be issued as promptly as possible.

Article 41. Laissez-passer

The host State shall recognize and accept the United Nations *laissez-passer* or a travel document issued by the Court to its officials as valid travel documents.

Article 42. Driving license

During their period of employment, officials of the Court, members of their family forming part of their household and their private or domestic servants shall be allowed to obtain from the host State a driving licence on presentation of their valid foreign driving licence or to continue to drive using their own valid foreign driving licence, provided the holder is in possession of an identity card issued by the host State in accordance with article 35 of this Agreement.

Section 3. Security, operational assistance

Article 43. Security, safety and protection of persons referred to in this Agreement

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

2. The Court shall cooperate with the competent authorities to ensure that all persons referred to in this Agreement observe the directives necessary for their security and safety, as given to them by the competent authorities.

3. Without prejudice to their privileges, immunities and facilities, it is the duty of all persons referred to in this Agreement to observe the directives necessary for their security and safety, as given to them by the competent authorities.

Article 44 Transport of persons in custody

1. The transport, pursuant to the Statute and the Rules of Procedure and Evidence, of a person in custody from the point of arrival in the host State to the premises of the Court shall, at the request of the Court, be carried out by the competent authorities in consultation with the Court.

2. The transport, pursuant to the Statute and the Rules of Procedure and Evidence, of a person in custody from the premises of the Court to the point of departure from the host State shall, at the request of the Court, be carried out by the competent authorities in consultation with the Court.

3. Any transport of persons in custody in the host State outside the premises of the Court shall, at the request of the Court, be carried out by the competent authorities in consultation with the Court.

4. The Court shall give reasonable notice to the competent authorities of the arrival of persons referred to in this article. Whenever possible, 72 hours' advance notice will be given.

5. Where the host State receives a request under this article and identifies problems in relation to the execution of the request, it shall consult with the Court, without delay, in order to resolve the matter. Such problems may include, *inter alia*,

(*a*) insufficient time and/or information to execute the request;

(*b*) the impossibility, despite best efforts, to make adequate security arrangements for the transport of the persons;

(*c*) the existence of a threat to public order and security in the host State.

6. A person in custody shall be transported directly and without impediment to the destination specified in paragraphs 1 and 2 of this article or to any other destination as requested by the Court under paragraph 3 of this article.

Article 45. Transport of persons appearing before the Court voluntarily or pursuant to a summons

The provisions of article 44 of this Agreement shall apply, *mutatis mutandis*, to the transport of persons appearing before the Court voluntarily or pursuant to a summons.

Article 46. Cooperation in detention matters

1. The host State shall cooperate with the Court to facilitate the detention of persons and to allow the Court to perform its functions within its detention centre.

2. Where the presence of a person in custody is required for the purpose of giving testimony or other assistance to the Court and where, for security reasons, such a person cannot be maintained in custody in the detention centre of the Court, the Court and the host State shall consult and, where necessary, make arrangements to transport the person to a prison facility or other place made available by the host State.

Article 47. Interim release

1. The host State shall facilitate the transfer of persons granted interim release into a State other than the host State.

2. The host State shall facilitate the re-entry into the host State of persons granted interim release and their short-term stay in the host State for any purpose related to proceedings before the Court.

3. The Court and the host State shall make practical arrangements as to the implementation of this article.

Article 48. Release without conviction

1. Subject to paragraph 2 of this article, where a person surrendered to the Court is released from the custody of the Court because the Court does not have jurisdiction, the

case is inadmissible under article 17, paragraph 1 (b), (c) or (d), of the Statute, the charges have not been confirmed under article 61 of the Statute, the person has been acquitted at trial or on appeal, or for any other reason, the Court shall, as soon as possible, make such arrangements as it considers appropriate for the transfer of the person, taking into account the views of the person, to a State which is obliged to receive him or her, to another State which agrees to receive him or her, or to a State which has requested his or her extradition with the consent of the original surrendering State.

2. Where the Court has determined that the case is inadmissible under article 17, paragraph 1 (a), of the Statute, the Court shall make arrangements, as appropriate, for the transfer of the person to a State whose investigation or prosecution has formed the basis of the successful challenge to admissibility, unless the State that originally surrendered the person requests his or her return.

3. The provisions of article 44 of this Agreement shall apply, *mutatis mutandis*, to the transport of persons referred to in this article within the host State.

Article 49. Enforcement of sentences in the host State

1. The Court shall endeavour to designate a State of enforcement in accordance with article 103, paragraph 1, of the Statute.

2. If no State is designated under article 103, paragraph 1, of the Statute, the Court shall inform the host State about the necessity to enforce a sentence in a prison facility made available by the host State in accordance with article 103, paragraph 4, of the Statute.

3. After the commencement of the enforcement of a sentence under article 103, paragraph 4, of the Statute the Court shall continue its endeavours to designate a State of enforcement under article 103, paragraph 1, of the Statute. The Court will communicate to the host State developments that it considers relevant, which relate to the list referred to in article 103, paragraph 1, of the Statute. The Court shall inform the host State as soon as a State of enforcement has accepted the Court's designation under article 103, paragraph 1, of the Statute.

4. The enforcement of a sentence shall be governed by the Statute, in particular the provisions of Part 10, and the Rules of Procedure and Evidence, in particular the relevant provisions of Chapter 12. The conditions of imprisonment shall be governed by the law of the host State, as provided in article 106, paragraph 2, of the Statute.

5. The host State may communicate to the Court for its consideration humanitarian concerns or other concerns related to the conditions or modalities of enforcement for the purposes of supervision of enforcement of sentences and conditions of imprisonment.

6. Further conditions of enforcement, as well as other arrangements, shall be laid down in a separate agreement between the Court and the host State. The Court and the host State shall make practical arrangements as to the implementation of enforcement in each case referred to in paragraph 2 of this article.

Article 50. Short-term detention arrangements

1. If, after conviction and final sentence, or after reduction of a sentence in accordance with article 110 of the Statute, the time remaining to be served under the sentence of the Court is less than six months, the Court shall consider whether the sentence may be enforced in the detention centre of the Court.

2. Where there is a need for a change in designation of the State of enforcement and where the period pending transfer to another State of enforcement does not exceed six months, the Court and the host State shall consult as to whether the sentenced person may be transferred to a prison facility made available by the host State under article 103, paragraph 4, of the Statute. Where the period pending transfer exceeds six months, the sentenced person shall be transferred from the detention centre of the Court to a prison facility made available by the host State under article 103, paragraph 4, of the Statute upon a request by the Court to that effect.

Article 51. Limitation to the exercise of jurisdiction by the host State

1. The host State shall not exercise its jurisdiction or proceed with a request for assistance or extradition from another State with regard to persons surrendered to the Court in accordance with Part 9 of the Statute, persons granted interim release or persons who appear before the Court voluntarily or pursuant to a summons, for any acts, omissions or convictions prior to the surrender, the transfer or the appearance before the Court except as provided for in the Statute and the Rules of Procedure and Evidence.

2. Where a person referred to in paragraph 1 of this article is, for any reason, released from the custody of the Court without conviction, that paragraph shall continue to apply for a period of fifteen consecutive days from the date of his or her release.

Chapter VI. Final provisions

Article 52. Supplementary arrangements and agreements

1. The provisions of this Agreement shall be supplemented at the time of signature by an exchange of letters which confirms the joint interpretation of the Agreement by the parties.

2. The Court and the host State may, for the purpose of implementing this Agreement or of addressing matters not foreseen in this Agreement, make other supplementary agreements and arrangements as appropriate.

Article 53. No less favourable treatment provision

If and to the extent that the host State, at any time in the future, accords privileges, immunities and treatment more favourable to any international organization or tribunal than comparable privileges, immunities and treatment in this Agreement, the Court or any person entitled to privileges and immunities under this Agreement shall enjoy these more favourable privileges, immunities and treatment.

Article 54. Settlement of disputes with third parties

The Court shall, without prejudice to the powers and responsibilities of the Assembly under the Statute, make provisions for appropriate modes of settlement of:

(*a*) disputes arising out of contracts and other disputes of a private-law character to which the Court is a party;

(*b*) disputes involving any person referred to in this Agreement who, by reason of his or her official position or function in connection with the Court, enjoys immunity, if such immunity has not been waived.

Article 55. Settlement of differences on the interpretation or application of this Agreement or supplementary arrangements or agreements

1. All differences arising out of the interpretation or application of this Agreement or supplementary arrangements or agreements between the Court and the host State shall be settled by consultation, negotiation or other agreed mode of settlement.

2. If the difference is not settled in accordance with paragraph 1 of this article within three months following a written request by one of the parties to the difference, it shall, at the request of either party, be referred to an arbitral tribunal according to the procedure set forth in paragraphs 3 to 5 of this article.

3. The arbitral tribunal shall be composed of three members: one to be chosen by each party and the third, who shall be the chairman of the tribunal, to be chosen by the other two members. If either party has failed to make its appointment of a member of the tribunal within two months of the appointment of a member by the other party, that other party may invite the President of the International Court of Justice to make such appointment. Should the first two members fail to agree upon the appointment of the chairman of the tribunal within two months following their appointment, either party may invite the President of the International Court of Justice to choose the chairman.

4. Unless the parties otherwise agree, the arbitral tribunal shall determine its own procedure and the expenses shall be borne by the parties as assessed by the tribunal.

5. The arbitral tribunal, which shall decide by a majority of votes, shall reach a decision on the difference on the basis of the provisions of this Agreement and subsequent arrangements or agreements and the applicable rules of international law. The decision of the arbitral tribunal shall be final and binding on the parties.

Article 56. Application

With respect to the Kingdom of the Netherlands, this Agreement shall apply to the part of the Kingdom in Europe only.

Article 57. Amendments and termination

1. This Agreement may be amended or terminated by mutual consent of the parties.

2. This Agreement shall cease to be in force by mutual consent of the parties.

Article 58. Entry into force

This Agreement shall enter into force on the first day of the second month after both parties have notified each other in writing that the legal requirements for entry into force have been complied with.

Done at the Hague on 7th June 2007 in duplicate, in the English language.

[*Signed*]	[*Signed*]
For the International Criminal Court	For the Kingdom of the Netherlands

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 2009, the number of Member States of the United Nations remained at 192.

2. Peace and Security

(*a*) Peacekeeping missions and operations

(i) *Peacekeeping missions and operations established in 2009*

No peacekeeping missions or operations were established in 2009.

(ii) *Changes in the mandate and/or extensions of time limits of ongoing peacekeeping operations or missions in 2009*

a. Cyprus

The United Nations Peacekeeping Force in Cyprus (UNFICYP) was established by Security Council resolution 186 (1964) of 4 March 1964. The Security Council decided by resolution 1873 (2009) of 29 May 2009 and resolution 1898 (2009) of 14 December 2009 to extend the mandate of UNFICYP until 15 December 2009 and 15 June 2010, respectively.

b. Syria and Israel

The United Nations Disengagement Observer Force (UNDOF) was established by Security Council resolution 350 (1974) of 31 March 1974. The Security Council renewed the mandate of UNDOF by resolution 1875 (2009) of 23 June 2009 and resolution 1899 (2009) of 16 December 2009, until 31 December 2009 and 30 June 2010, respectively.

c. Lebanon

The United Nations Interim Force in Lebanon (UNIFIL) was established by Security Council resolution 425 (1978) and 428 (1978) of 19 March 1978. Following a request by

the Prime Minister of Lebanon, presented in a letter dated 4 July 2009 addressed to the Secretary-General, the Secretary-General requested the Security Council to consider the renewal of the mandate of UNIFIL, which was due to expire on 31 August 2009.[1] On 27 August 2009, the Security Council adopted resolution 1884 (2009) by which it decided to extend the mandate of UNIFIL until 31 August 2010.

d. Western Sahara

The United Nations Mission for the Referendum in Western Sahara (MINURSO) was established by Security Council resolution 690 (1991) of 19 April 1991. By resolution 1871 (2009) adopted on 30 April 2009, the Security Council decided to extend the mandate of MINURSO until 30 April 2010.

e. Georgia

The United Nations Observer Mission in Georgia (UNOMIG) was established by Security Council resolution 858 (1993) of 24 August 1993. By its resolution 1866 (2009), adopted on 13 February 2009, the Security Council decided to extend the mandate of UNOMIG for a period terminating on 15 June 2009. The mandate was not renewed further by the Security Council.

f. Democratic Republic of the Congo

The United Nations Organization Mission in the Democratic Republic of the Congo (MONUC) was established by Security Council resolution 1279 (1999) of 30 November 1999. By resolution 1906 (2009), adopted on 23 December 2009, the Security Council decided to extend the mandate of MONUC until 31 May 2010.

In the same resolution, the Security Council decided that MONUC would be mandated, in order of priority: to ensure the effective protection of civilians, humanitarian personnel and United Nations personnel and facilities; to carry out enhanced activities of disarmament, demobilization and reintegration of Congolese armed groups and of disarmament, demobilization, repatriation, resettlement and reintegration of foreign armed groups; and to support the security sector reform led by the Government of the Democratic Republic of the Congo. Further, MONUC was authorized to use all necessary means, within the limits of its capacity and in the areas where its units are deployed, in carrying out the tasks mandated to it in paragraphs 3 (a) to (e) of resolution 1856 (2008), as well as in the following tasks: to build on best practices and extend successful protection measures on protection piloted in North Kivu; to deter any attempt at the use of force to threaten the Goma and Nairobi processes from any armed group, particularly in the eastern part of the Democratic Republic of the Congo; to undertake all necessary operations to prevent attacks on civilians and disrupt the military capability of armed groups that continue to use violence in that area; to continue its coordination of operations with the Armed Forces of the Democratic Republic of the Congo (FARDC) brigades deployed in the eastern part of the Democratic Republic of the Congo, premised on the protection of civilians as a priority, on operations being jointly planned with these brigades; and to contribute further to the

[1] Letter dated 6 August 2009 from the Secretary-General addressed to the President of the Security Council (S/2009/407).

implementation of disarmament, demobilization and reintegration of Congolese combatants and their dependents.

g. Liberia

The United Nations Mission in Liberia (UNMIL) was established by Security Council resolution 1509 (1993) of 19 September 1993. The Security Council decided by resolution 1885 (2009) of 15 September 2009 to extend the mandate of UNMIL until 30 September 2010.

In the same resolution, the Council authorized UNMIL to assist the Liberian Government with the 2011 general presidential and legislative elections, by providing logistical support, particularly to facilitate access to remote areas, coordinating international electoral assistance, and supporting Liberian institutions and political parties in creating an atmosphere conducive to the conduct of peaceful elections. It further endorsed the recommendations by the Secretary-General that the conduct of free and fair, conflict-free elections be a core benchmark for UNMIL's future drawdown, and to implement the third stage of its drawdown from October 2009 to May 2010.[2]

h. Côte d'Ivoire

The United Nations Operation in Côte d'Ivoire (UNOCI) was established by Security Council resolution 1528 (2004) of 27 February 2004. By resolutions 1865 (2009) of 27 January 2009 and 1880 (2009) of 30 July 2009, the Security Council decided to renew the mandates of UNOCI and of the French forces which support it, as determined in resolution 1739 (2007), until 31 July 2009 and 31 January 2010, respectively, in particular to support the organization in Côte d'Ivoire of free, open, fair and transparent elections.

In resolution 1865 (2009), the Security Council, *inter alia*, endorsed the recommendations by the Secretary-General contained in his report dated 8 January 2009;[3] decided to reduce the level of authorized military personnel from 8115 to 7450; and further endorsed the benchmarks proposed by the Secretary-General for a possible further drawdown.[4]

i. Haiti

The United Nations Stabilization Mission in Haiti (MINUSTAH) was established by Security Council resolution 1542 (2004) of 30 April 2004. By its resolution 1892 (2009) of 13 October 2009, the Security Council decided to extend the mandate of MINUSTAH as contained in its resolutions 1542 (2004), 1608 (2005), 1702 (2006), 1743 (2007), 1780 (2007) and 1840 (2008) until 15 October 2010, with the intention of further renewal.

In resolution 1892 (2009), the Council also endorsed the recommendations by the Secretary-General to maintain the current Mission overall force levels until the planned

---

[2] See the recommendations by the Secretary-General contained in Special Report of the Secretary-General on the United Nations Mission in Liberia, 10 June 2009 (S/2009/299), and Nineteenth progress report of the Secretary-General on the United Nations Mission in Liberia, 10 August 2009 (S/2009/411).

[3] See paragraphs 46 and 61 of the Nineteenth progress report of the Secretary-General on the United Nations Operation in Côte d'Ivoire, 8 January 2009 (S/2009/21).

[4] *Ibid.*, paragraph 47.

substantial increase of the Haitian National Police capacity allows for a reassessment of the situation,[5] while adjusting its force configuration to better meet current requirements on the ground, and decided that MINUSTAH will consist of a military component of up to 6940 troops of all ranks and of a police component of up to 2,211 police.

j. Sudan

The United Nations Mission in the Sudan (UNMIS) was established by Security Council resolution 1590 (2005) on 24 March 2005. On 30 April 2009, the Security Council decided, by resolution 1870 (2009), to extend the mandate of UNMIS until 30 April 2010, with the intention to renew it for further periods as may be required.

k. Timor-Leste

The United Nations Integrated Mission in Timor-Leste (UNMIT) was established by Security-Council resolution 1704 (2006) of 25 August 2006. The mandate of UNMIT was extended by Security Council resolution 1867 (2009) of 26 February 2009, until 26 February 2010.

l. Darfur

The African Union/United Nations Hybrid Operation in Darfur (UNAMID) was established and authorized by Security Council resolution 1769 (2007) of 31 July 2007. On 30 July 2009, the Security Council decided, by resolution 1881 (2009), to extend the mandate of UNAMID for 12 months, until 31 July 2010.

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. On 14 January 2009, the Security Council decided, by resolution 1861 (2009), to extend the mandate of MINURCAT until 15 March 2010.

In the same resolution, the Security Council authorized the deployment of a military component of MINURCAT to follow up the European Union-led peacekeeping force (EUFOR) in both Chad and the Central African Republic at the end of its mandate, and decided that the transfer of authority from EUFOR to the military component of MINURCAT would take place on 15 March 2009. The Council further decided that MINURCAT should include a maximum of 300 police officers, 25 military liaison officers, 5,200 military personnel, and an appropriate number of civilian personnel. It decided that MINURCAT's mandate in eastern Chad and the north-eastern Central African Republic, in liaison with the United Nations Peacebuilding Support Office in the Central African Republic (BONUCA) and without prejudice to the mandate of BONUCA, should include, *inter alia*, to select, train, advise and facilitate support to the *Détachement intégré de sécurité*; to liaise with the Chadian Government and the Office of the United Nations High Commissioner for Refugees (UNHCR) in support of their efforts to relocate refugee camps

[5] See paragraphs 26 and 27 of the report of the Secretary-General on the United Nations Stabilization Mission in Haiti, 1 September 2009 (S/2009/439).

which are in close proximity to the border; to support the initiatives of national and local authorities in Chad to resolve local tensions and promote local reconciliation efforts, in order to enhance the environment for the return of internally displaced persons; and to contribute to the monitoring and to the promotion and protection of human rights in Chad, with particular attention to sexual and gender-based violence, and to recommend action to the competent authorities.

MINURCAT was authorized to take all necessary measures, within its capabilities and its area of operations in eastern Chad, to fulfil the following functions, in liaison with the Government of Chad: to contribute to protecting civilians in danger, particularly refugees and internally displaced persons; to facilitate the delivery of humanitarian aid and the free movement of humanitarian personnel by helping to improve security in the area of operations; to protect United Nations personnel, facilities, installations and equipment and ensure the security and freedom of movement of its staff and United Nations and associated personnel. It was further authorized to take all necessary measures, within its capabilities and its area of operations in the north-eastern Central African Republic, to fulfil the following functions, through establishing a permanent military presence in Birao and in liaison with the Government of the Central African Republic: to contribute to the creation of a more secure environment; to execute operations of a limited character in order to extract civilians and humanitarian workers in danger; and to protect United Nations personnel, facilities, installations and equipment and to ensure the security and freedom of movement of its staff and United Nations and associated personnel.

(iii) *Peacekeeping missions or operations concluded in 2009*

Georgia

The United Nations Observer Mission in Georgia (UNOMIG) was established by Security Council resolution 858 (1993) of 24 August 1993. The mandate of UNOMIG, as decided by Security Council resolution 1866 (2009) of 13 February 2009, expired on 15 June 2009.

(*b*) Political and peacebuilding missions

(i) *Political and peacebuilding missions established in 2009*

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.[6] In a letter dated 3 March 2009, the Secretary-General recommended that BONUCA be succeeded, initially

[6] Ninth report of the Secretary-General on the United Nations Mission in the Central African Republic, dated 14 January 2000 (S/2000/24), and the Statement by the President of the Security Council, dated 10 February 2000 (S/PRST/2000/5).

until 31 December 2009, by a United Nations Integrated Peacebuilding Office (BINUCA), with a revised mandate and structure.[7]

(ii) *Changes in the mandate and/or extensions of the time limits of ongoing political and peacebuilding missions in 2009*

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.

By resolution 1863 (2009) of 16 January 2009, the Security Council decided that UNPOS and the United Nations country team should continue to promote a lasting peace and stability in Somalia through the implementation of the Djibouti Peace Agreement, and to facilitate coordination of international support to these efforts; and requested the Secretary-General to conduct immediate contingency planning for the deployment of United Nations offices and agencies into Somalia. The Council further welcomed the proposal of the Secretary-General contained in his letter of 19 December 2008 to establish within UNPOS a dedicated capacity that would include expertise in police and military training, planning for future disarmament, demobilization and reintegration activities and Security Sector Reform activities, as well as rule of law and correction components.[8]

In resolution 1872 (2009), adopted on 26 May 2009, the Security Council requested the Secretary-General, through his Special Representative for Somalia and UNPOS, *inter alia*, to coordinate effectively and develop an integrated approach to all activities of the United Nations system in Somalia; to provide good offices and political support for the efforts to establish lasting peace and stability in Somalia; and to work with the Transitional Federal Government to develop its capacity to address human rights issues and to support the Justice and Reconciliation Working Group to counter impunity. The Secretary-General was further requested to expedite the proposed deployment of elements of UNPOS and other United Nations offices and agencies, including the United Nations Support Office for African Union Mission in Somalia (UNSOA), to Mogadishu, consistent with the security conditions, as outlined in his report.[9]

b. Guinea-Bissau

On 26 June 2009, the Security Council adopted resolution 1876 (2009), by which it decided to extend the mandate of United Nations Peacebuilding Support Office in Guinea-Bissau (UNOGBIS) until 31 December 2009. In the same resolution, the Secretary-General was requested to establish a United Nations Integrated Peacebuilding Office in Guinea-

---

[7] Letter dated 3 March 2009 from the President of the Security Council addressed to the Secretary-General (S/2009/128).

[8] Letter dated 19 December 2008 from the Secretary-General to the President of the Security Council (S/2008/804).

[9] Report of the Secretary-General on Somalia pursuant to Security Council resolution 1863 (2009), 16 April 2009 (S/2009/210).

Bissau (UNIOGBIS) to succeed UNOGBIS, as recommended by him in his report[10] for an initial period of 12 months, beginning on 1 January 2010.

c. Afghanistan

The United Nations Assistance Mission in Afghanistan (UNAMA) was established by Security Council resolution 1401 (2002) of 28 March 2002. On 23 March 2009, the Security Council decided by resolution 1868 (2009) to extend the mandate of UNAMA until 23 March 2010.

d. Iraq

The United Nations Mission for Iraq (UNAMI) was established by Security Council resolution 1500 (2003) of 14 August 2003. By resolution 1883 (2009), adopted on 7 August 2009, the Security Council decided to extend the mandate of UNAMI for a period of twelve months.

e. 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 1709 (2006) of 25 October 2006. On 17 December 2009, the Council decided by resolution 1902 (2009) to extend the mandate of BINUB until 31 December 2010. The Council also decided thereby that BINUB, in close cooperation with the Government of Burundi, should pay particular attention to supporting the electoral process, democratic governance, the consolidation of peace, sustainable reintegration and gender issues.

f. Nepal

The United Nations Political Mission in Nepal (UNMIN) was established pursuant to Security Council resolution 1740 (2007) of 23 January 2007. By resolution 1864 (2009) of 23 January 2009, the Security Council decided, in line with a request from the Government of Nepal[11] and the Secretary-General's recommendations,[12] to extend the mandate of UNMIN until 23 July 2009, taking into account the completion of some elements of the mandate, the ongoing work on the monitoring and the management of arms and armed personnel in line with the 25 June agreement among the political parties, which will support the completion of the peace process. The Council further endorsed the Secretary-General's recommendations for a phased, gradual, drawdown and withdrawal of UNMIN staff, including arms monitors, as proposed in his report.

---

[10] Report of the Secretary-General on developments in Guinea-Bissau and on the activities of the United Nations Peacebuilding Support Office in that country, 10 June 2009 (S/2009/302).

[11] Letter from the Government of Nepal contained in the Annex to the Letter dated 30 December 2008 from the Secretary-General addressed to the President of the Security Council (S/2008/837).

[12] Report of the Secretary-General on the request of Nepal for United Nations assistance in support of its peace process, 2 January 2009 (S/2009/1).

By resolution 1879 (2009) of 23 July 2009, the Security Council, in line with the request from the Government of Nepal[13] and the Secretary-General's recommendations[14] further renewed the mandate of UNMIN until 23 January 2010.

g. Sierra Leone

The United Nations Integrated Peacebuilding Office in Sierra Leone (UNIPSIL) was established by Security Council resolution 1829 (2008) of 4 August 2008. On 15 September 2009, the Security Council decided by resolution 1886 (2009) to extend the mandate of UNIPSIL until 30 September 2010. The Council *inter alia* called upon the Secretary-General to develop a set of benchmarks for the transition of UNIPSIL into a United Nations Country Team presence. It further called upon the Government of Sierra Leone, UNIPSIL and all other stakeholders in the country to increase their efforts to promote good governance, including through continued measures to combat corruption, improve accountability, promote the development of the private sector to generate wealth and employment opportunities, intensify efforts against drug trafficking and strengthen the judiciary and promote human rights, including through implementation of the recommendations of the Truth and Reconciliatiion Commission and sustaining support to the National Human Rights Commission.

(iii) *Other ongoing political and peacebuilding missions in 2009*

a. Middle East

The Office of the United Nations Special Coordinator for the Middle East (UNSCO), established by the Secretary-General on 1 October 1999,[15] continued to operate throughout 2009.

b. Lebanon

The Secretary-General decided in 2000 to appoint a senior official to serve as his representative in Lebanon.[16] The title of the representative was subsequently changed to Personal Representative for southern Lebanon and to Special Coordinator for Lebanon, in 2005[17] and 2007,[18] respectively. The Special Coordinator for Lebanon continued to operate throughout 2009.

---

[13] Letter from the Government of Nepal contained in the Letter dated 14 July 2009 from the Secretary-General addressed to the President of the Security Council (S/2009/360).

[14] Report of the Secretary-General on the request of Nepal for United Nations assistance in support of its peace process, 13 July 2009 (S/2009/351).

[15] Exchange of letters between the Secretary-General and the Security Council, dated 10 September and 16 September 1999 (S/1999/983 and S/1999/984).

[16] Report of the Secretary-General on the United Nations Interim Force in Lebanon (for the period from 17 January to 17 July 2000), 20 July 2000 (S/2000/718).

[17] Letter dated 29 March 2005 from the Secretary-General to the President of the Security Council, S/2005/216.

[18] Letter dated 8 February 2007 from the Secretary-General to the President of the Security Council, (S/2007/85).

c. West Africa

The United Nations Office for West Africa (UNOWA), originally established by the Secretary-General in 2002,[19] and subsequently extended in 2004[20] and 2007,[21] continued operating through 2009. The Secretary-General submitted three reports on UNOWA in 2009.[22]

(iv) *Political and Peacebuilding missions concluded in 2009*

a. 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 1999.[23] On 26 June 2009, the Security Council adopted resolution 1876 (2009), by which it decided to extend the mandate of UNOGBIS until 31 December 2009. In the same resolution, the Secretary-General was, *inter alia*, requested to establish a United Nations Integrated Peacebuilding Office in Guinea-Bissau (UNIOGBIS) to succeed UNOGBIS, as recommended by him in his report[24] for an initial period of 12 months, beginning on 1 January 2010.

b. 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.[25] In a letter dated 3 March 2009, the Secretary-General recommended that BONUCA be succeeded, initially until 31 December 2009, by a United Nations Integrated Peacebuilding Office (BINUCA), with a revised mandate and structure.[26]

---

[19] Exchange of letters between the Secretary-General and the President of the Security Council dated 26 November and 29 November 2001 (S/2001/1128 and S/2001/1129).

[20] Exchange of letters between the Secretary-General and the President of the Security Council dated 4 October and 25 October 2004 (S/2004/797 and S/2004/858).

[21] Exchange of letters between the Secretary-General and the President of the Security Council dated 28 November and 21 December 2007 (S/2007/753 and S/2007/754).

[22] Reports of the Secretary-General on the United Nations Office for West Africa, of 15 January (S/2009/39) 19 June (S/2009/332) and 31 December (S/2009/682), respectively.

[23] 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).

[24] Report of the Secretary-General on developments in Guinea-Bissau and on the activities of the United Nations Peacebuilding Support Office in that country, 10 June 2009 (S/2009/302).

[25] Ninth report of the Secretary-General on the United Nations Mission in the Central African Republic, dated 14 January 2000 (S/2000/24), and the Statement by the President of the Security Council, dated 10 February 2000 (S/PRST/2000/5).

[26] Letter dated 3 March 2009 from the President of the Security Council addressed to the Secretary-General (S/2009/128).

c. 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.[27] In a letter dated 26 May 2009, the Secretary-General informed the President of the Security Council that, as his Special Envoy had achieved the main objectives mandated to him, it was his intention to suspend the mandate of the Special Envoy as of 30 June 2009.[28]

(*c*) Other bodies

(i) *Fact-finding mission on the Gaza conflict*

On 3 April 2009, the President of the Human Rights Council established the United Nations Fact Finding Mission on the Gaza Conflict with the mandate "to investigate all violations of international human rights law and international humanitarian law that might have been committed at any time in the context of the military operations that were conducted in Gaza during the period from 27 December 2008 and 18 January 2009, whether before, during or after".

The Mission convened in Geneva between 4 and 8 May, on 20 May, on 4 and 5 July, and between 1 and 4 August 2009. The Mission conducted three field visits: two to the Gaza Strip between 30 May and 6 June, and between 25 June and 1 July 2009; and one visit to Amman on 2 and 3 July 2009. Several staff members of the Mission's secretariat were deployed in Gaza from 22 May to 4 July 2009 to conduct field investigations.

Following the submission of its report[29] to the Human Rights Council, the Council held a special session on 15 and 16 October 2009.[30] By resolution S-12/1, adopted on 16 October 2009, the Council recommended that the General Assembly consider the report of the fact-finding mission during the main part of its sixty-fourth session.

By resolution 64/10 of 5 November 2009, the General Assembly endorsed the report of the Human Rights Council at its Twelfth Special Session, and requested the Secretary-General to transmit to the Security Council the report of the fact-finding mission. By a letter dated 10 November 2009, the Secretary-General transmitted the report to the Security Council.[31]

---

[27] Letter dated 21 November 2007 from the Secretary-General addressed to the President of the Security Council (S/2007/719).

[28] Letter dated 26 May 2009 from the Secretary-General addressed to the President of the Security Council (S/2009/281).

[29] Report of the United Nations Fact-Finding Mission on the Gaza Conflict, 25 September 2009 (A/HRC/12/48).

[30] Twelfth Special Session of the Human Rights Council: "The human rights situation in the Occupied Palestinian Territory and East Jerusalem—15 and 16 October 2009". For the report of the Twelfth Special Session, see (A/HRC/S-12/1).

[31] Letter dated 10 November 2009 from the Secretary-General addressed to the President of the Security Council (S/2009/586).

(ii) *The Sudan*

The Panel of Experts for the Sudan was originally appointed pursuant to Security Council resolution 1591 (2005) and was subsequently extended by resolutions 1651 (2005), 1665 (2006), 1713 (2006), 1779 (2007), and 1841 (2008). On 13 October 2009, the Security Council extended the mandate of the Panel of Experts by resolution 1891 (2009), until 15 October 2010. The Panel of Experts was requested, *inter alia*, to provide no later than 31 March 2010 a midterm briefing on its work and no later than 90 days after adoption of resolution 1891 (2009) an interim report to the Committee established pursuant to paragraph 3 (a) of resolution 1591 (2005), and a final report no later than 30 days prior to termination of its mandate to the Council with its findings and recommendations.

(iii) *Guinea*

By a letter dated 28 October 2009,[32] the Secretary-General informed the President of the Security Council that he intended to establish an international Commission of Inquiry to investigate the many killings, injuries and alleged gross human rights violations that took place in the Republic of Guinea on 28 September 2009, in response to widespread appeals from Member States, including the Government of Guinea, members of the Economic Community of West African States (ECOWAS), the African Union (AU) and the Security Council. The Commission was mandated to establish the facts and circumstances of the events of 28 September 2009 and the related events in their immediate aftermath; to qualify the crimes perpetrated; to determine responsibilities; and, where possible, to identify those responsible. It was also to make recommendations, in particular, on accountability measures. By a letter dated 18 December 2009,[33] the Secretary-General transmitted to the members of the Security Council a copy of the report of the Commission of Inquiry.[34]

(iv) *Liberia*

The mandate of the Panel of Experts established pursuant to Security Council resolution 1760 (2007) was extended until 20 December 2010, by resolution 1903 (2009), adopted by the Council on 17 December 2009. The Panel of Experts was mandated, *inter alia*, to conduct two follow-up assessment missions to Liberia and neighbouring States, in order to investigate and compile a midterm and a final report on the implementation, and any violations, of the measures imposed by paragraphs 4 and 6 of resolution 1903 (2009) and of resolution 1521 (2003); to assess the impact of and effectiveness of the measures imposed by paragraph 1 of resolution 1532 (2004); within the context of Liberia's evolving legal framework, to assess the extent to which forestry and other natural resources are contributing to peace, security and development rather than to instability and to what extent relevant legislation is contributing to this transition; to assess the Government of Liberia's compliance with the Kimberley Process Certification Scheme; and to coordinate with the Kimberley Process in assessing compliance.

---

[32] S/2009/556.

[33] S/2009/693.

[34] *Ibid.*, annex.

(*d*) Missions of the Security Council

(i) *Haiti*

In a letter dated 3 February 2009, the President of the Security Council informed the Secretary-General that the members of the Council had decided to send a mission to Haiti from 10 to 14 March.[35] In a letter dated 10 March 2009, the Council informed the Secretary-General of the agreed terms of reference of the mission, and of the composition of the mission.[36]

The terms of reference for the mission included, *inter alia*, to reaffirm the Security Council's continued support for the Government and people of Haiti to rebuild their country, consolidate peace and stability and promote recovery and sustainable development, bearing in mind the significant setbacks which occurred in 2008; to reiterate the importance of immediate, medium- and long-term sustained efforts and appropriate international and regional support to consolidate peace, stability and development in Haiti, while bearing in mind the ownership and primary responsibility of the Government and people of Haiti; to assess the status of implementation of relevant Security Council resolutions, in particular resolution 1840 (2008), and to review the progress made by the Government of Haiti, with the assistance of the international community, in particular the United Nations Stabilization Mission in Haiti (MINUSTAH), in addressing the interconnected challenges they face in the areas of security, including security sector reform; border management; institutional support and governance, including elections and reform processes; rule of law; human rights; and economic and social development. The mission was further to urge the Government of Haiti to intensify its efforts to promote an effective and all-inclusive political dialogue aimed at national reconciliation, good governance and sustainable development; to evaluate and discuss with the Government of Haiti the situation and progress in addressing the overall humanitarian situation in the country, including the food security situation, and its implications for security, socio-economic development and stability; and to assess and continue to encourage the implementation of quick-impact projects to complement security and development operations undertaken by the Haitian authorities with the support of MINUSTAH and the country team. The mission was finally to draw insights from lessons learned by MINUSTAH that can inform consideration by the Council members of broader systemic and peacekeeping issues in connection with the Council's ongoing review of peacekeeping operations.

(ii) *Africa*

In a letter dated 12 May 2009, the President of the Security Council informed the Secretary-General that the members of the Council had decided to send a mission to Africa from 14 to 21 May 2009.[37] The terms of reference for the mission to the African Union, the

[35] Report of the Security Council mission to Haiti (11 to 14 March 2009), 3 April 2009 (S/2009/175).

[36] Letter dated 10 March 2009 from the President of the Security Council addressed to the Secretary-General (S/2009/139).

[37] Letter dated 12 May 2009 from the President of the Security Council addressed to the Secretary-General (S/2009/243).

Great Lakes Region (Rwanda and the Democratic Republic of the Congo), and Liberia, respectively, were contained in the annexes to that letter.[38]

As to the terms of reference for the mission to the African Union, the mission was: (1) to continue to develop an effective partnership and enhance cooperation between the African Union and the United Nations; (2) to exchange views on situations of interest to both the United Nations Security Council and the African Union Peace and Security Council, which included but were not limited to: a brief overview of the peace and security situation in Africa; the situation in the Sudan; the challenges to the political process and the functioning of the African Union-United Nations Hybrid Operation in Darfur (UNAMID); the humanitarian situation in Darfur; the situation in Somalia; piracy; the situation in the Great Lakes region, in particular eastern Democratic Republic of the Congo; progress and challenges to stabilization in eastern Democratic Republic of the Congo; and the resurgence of unconstitutional changes of government including efforts undertaken by the African Union to resolve and prevent unconstitutional changes of government.

As to the mission to the Great Lakes Region, the terms of reference included, *inter alia,* to recall the commitment of the Security Council to the sovereignty, territorial integrity and political independence of all States in the region; to reiterate support for the strengthening of the regional dynamic, including through the development, where appropriate, of economic projects of common interest and the implementation of appropriate steps to facilitate legal trade and put an end to illegal trafficking of natural resources; to stress that all parties should reinvigorate their participation in the Goma and Nairobi processes, which are the agreed framework for stabilizing the eastern part of the Democratic Republic of the Congo, and urge all parties to fully recommit to their respective disarmament, demobilization and reintegration, and disarmament, demobilization, repatriation, resettlement and reintegration programmes. The mission was further to emphasize the support of the Council for action against the Lord's Resistance Army (LRA); and to underline the importance of full implementation of the sanctions measures put in place through resolution 1857 (2008).

In addition, the mission was provided additional terms of reference for the visit to the Democratic Republic of the Congo and Rwanda, respectively. For the Democratic Republic of the Congo, the terms of reference included, *inter alia*, to acknowledge the primary responsibility of the Government of the Democratic Republic of the Congo to consolidate peace and stability, and to promote recovery and development in the country, which require long-term sustained efforts and appropriate international support; to call on the Congolese authorities to intensify their efforts to reform the security sector, with the assistance of the international community; to emphasize the support of the Council for the strengthening of democratic institutions, the rule of law, and good governance in the Democratic Republic of the Congo, including through the holding of local elections; and to recall the utmost importance of the fight against impunity, notably in the eastern part of the Democratic Republic of the Congo, by bringing to justice those who have committed crimes and atrocities. For Rwanda, the terms of reference included to discuss Rwandan concerns in the region, and how these could be addressed while respecting the sovereignty and territorial integrity of all States in the Great Lakes region.

[38] For the report of the mission, see Report of the Security Council mission to the African Union; Rwanda and the Democratic Republic of the Congo; and Liberia, 11 June 2009 (S/2009/303).

As to the mission to Liberia, the terms of reference included, *inter alia*, to reaffirm the continued support of the Security Council for the Government and people of Liberia as they rebuild their country, strengthen the foundations of sustainable peace, constitutional democracy, and economic development and assume their rightful place in the community of nations; to assess the operational capacity and sustainability of the Liberian National Police and other national security institutions, and assess progress made in training the Armed Forces of Liberia; to express support for the efforts of the Government of Liberia to extend and consolidate effective State authority in all 15 counties of the country, with the assistance of the international community; and to examine the impact of subregional factors on the situation in Liberia, and explore ways to strengthen regional cooperation, including measures to counter the threat of illegal drug trafficking. The mission was finally to underline the need for full implementation of the sanctions regime on Liberia.

(*e*) Other peacekeeping matters

Criminal accountability of United Nations officials and experts on mission[39]

On 16 December 2009, the General Assembly adopted resolution 64/110, by which it strongly urged all States to consider establishing to the extent that they had not yet done so jurisdiction, particularly over crimes of a serious nature, as known in their existing domestic criminal laws, committed by their nationals while serving as United Nations officials or experts on mission, at least where the conduct as defined in the law of the State establishing jurisdiction also constitutes a crime under the laws of the host State. The Secretariat was requested to continue to ensure that requests to Member States seeking personnel to serve as experts on mission make States aware of the expectation that persons who serve in that capacity should meet high standards in their conduct and behaviour and be aware that certain conduct may amount to a crime for which they may be held accountable; and the Secretary-General was urged to continue to take such other practical measures as are within his authority to strengthen existing training on United Nations standards of conduct, including through predeployment and in-mission induction training for United Nations officials and experts on mission. The United Nations, when allegations against United Nations officials or experts on mission are determined by a United Nations administrative investigation to be unfounded, was encouraged to take appropriate measures, in the interests of the Organization, to restore the credibility and reputation of such officials and experts on mission. The Secretary-General was further requested to report 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 United Nations officials and experts on mission, and on how the United Nations might support Member States, at their request, in the development of domestic criminal law relating to such crimes committed by their nationals while serving as United Nations officials or experts on mission.

[39] See also the section on legal questions dealt with by the Sixth Committee and other related subsidiary bodies of the General Assembly, section 17 of this chapter.

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

(i) *Authorization by the Security Council in 2009*

Bosnia and Herzegovina

By resolution 1895 (2009), adopted on 18 November 2009, the Security Council authorized the 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 (SFOR) under unified command and control, which will fulfil its missions in relation to the implementation of annex 1-A and annex 2 of the Peace Agreement[40] in cooperation with the NATO Headquarters presence. The Council recalled that EURFOR and the continued NATO presence are the legal successors to SFOR for the fulfilment of their missions for the purposes of the Peace Agreement, its annexes and appendices and relevant United Nations Security Council resolutions. The Council further authorized the Member States acting under the above mandate to take all necessary measures to effect the implementation of and to ensure compliance with annexes 1-A and 2 of the Peace Agreement.

(ii) *Changes in authorization and/or extension of time limits in 2009*

a. Afghanistan

In its resolution 1890 (2009) of 8 October 2009, the Security Council decided to extend the authorization of the International Security Assistance Force (ISAF), as defined in resolution 1386 (2001) and 1510 (2003), for a period of twelve months beyond 13 October 2009. The Council further authorized Member States participating in ISAF to take all necessary measures to fulfil its mandate.

b. Somalia[41]

On 16 January 2009, the Security Council adopted resolution 1863 (2009) by which, acting under Chapter VII of the Charter, it decided to renew for up to six months the authorization of Member States of the African Union to maintain a mission in Somalia, authorized to take all necessary measures to carry out the mandate set out in paragraph 9 of resolution 1772 (2007). The Council underlined in particular that the African Union Mission in Somalia (AMISOM) was authorized to take all necessary measures to provide security for key infrastructure and to contribute, as may be requested and within its capabilities and existing mandate, to the creation of the necessary security conditions for the provision of humanitarian assistance. The Council further expressed its intent to establish a United Nations Peacekeeping Operation in Somalia as a follow-on force to AMISOM, subject to a further decision of the Security Council.

On 26 May 2009, the Security Council adopted resolution 1872 (2009), by which, acting under Chapter VII of the Charter, it decided to authorize the Member States of

[40] General Framework Agreement for Peace in Bosnia and Herzegovina and the Annexes thereto, 30 November 1995 (S/1995/999, annex).

[41] See also, with regard to acts of piracy off the coast of Somalia, section (j) on piracy, p. 127 below.

the African Union to maintain AMISOM until 31 January 2010 to carry out its existing mandate. The Council further requested the Secretary-General to expedite the proposed deployment of elements of the United Nations Political Office for Somalia (UNPOS) and other United Nations offices and agencies, including the United Nations Support Office for AMISOM (UNSOA), to Mogadishu consistent with the security conditions, as outlined in his report.[42]

c. Sudan

The African Union/United Nations Hybrid operation in Darfur (UNAMID) was originally authorized by Security Council resolution 1769 (2007) of 31 July 2007. By resolution 1881 (2009), adopted on 30 July 2009, the Security Council decided to extend the mandate of UNAMID for 12 months, until 31 July 2010.

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

(i) *Democratic Republic of the Congo*

On 30 November 2009, the Security Council adopted resolution 1896 (2009), by which it decided to renew until 30 November 2010 the measures on arms imposed by paragraph 1 of resolution 1807 (2008). It further decided to renew for the same period the measures on transport imposed by paragraphs 6 and 8 of resolution 1807 (2008), and the financial and travel measures imposed by paragraphs 9 and 11 of resolution 1807 (2008).

In addition, the Council decided to expand the mandate of the Committee as set out in paragraph 8 of resolution 1533 (2004) and expanded upon in paragraph 18 of resolution 1596 (2005), paragraph 4 of resolution 1649 (2005) and paragraph 14 of resolution 1698 (2006) and reaffirmed in paragraph 15 of resolution 1807 (2008) and paragraphs 6 and 25 of resolution 1857 (2008). The mandate was further expanded to include the following tasks: to promulgate guidelines taking into account paragraphs 17 to 24 of resolution 1857 (2008) within six months, in order to facilitate the implementation of the measures imposed by the resolution, and to keep them under active review as may be necessary; to hold regular consultations with concerned Member States in order to ensure full implementation of the measures set forth in the resolution; and to specify the necessary information that Member States should provide in order to fulfil the notification requirement set out in paragraph 5 of resolution 1807 (2008) and to circulate this among Member States.

(ii) *Côte d'Ivoire*

By resolution 1893 (2009), adopted on 29 October 2009, the Security Council decided to renew until 31 October 2010 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). It decided to review those measures no later than

[42] Report of the Secretary-General on Somalia pursuant to Security Council resolution 1863 (2009), 16 April 2009 (S/2009/210).

three months after the holding of open, free, fair and transparent presidential elections in accordance with international standards, with a view to possibly modifying the sanctions regime, and no later than 30 April 2010. The Council further decided that the measures imposed by paragraph 6 of resolution 1643 (2005) shall not apply to an import that will be used solely for the purposes of scientific research and analysis to facilitate the development of specific technical information concerning Ivorian diamond production, provided that the research is coordinated by the Kimberley Process.

(iii) *Liberia*

By resolution 1903 (2009) of 17 December 2009, the Security Council decided to renew for a period of 12 months the measures on travel imposed by paragraph 4 of resolution 1521 (2003). It recalled that the measures imposed by paragraph 1 of resolution 1532 (2004) remained in force, and noted with serious concern the findings of the Panel of Experts[43] on the lack of progress with regards to the implementation of the financial measures imposed by paragraph 1 of resolution 1532 (2004). The Council decided that the measures on arms, previously 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), no longer should apply to the supply, sale or transfer of arms and related materiel and the provision of any assistance, advice or training, related to military activities, to the Government of Liberia for a period of twelve months. To replace these provisions, the Council decided 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 materiel and 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 Liberia for a period of 12 months. These measures would not however apply to supplies of arms and related materiel as well as technical training and assistance intended solely for support of or use by the United Nations Mission in Liberia (UNMIL); to protective clothing, including flak jackets and military helmets, temporarily exported to Liberia by United Nations personnel, representatives of the media and humanitarian and development workers and associated personnel, for their personal use only; or to supplies of non-lethal military equipment intended solely for humanitarian or protective use, and related technical assistance and training, as notified in advance to the Committee established by paragraph 21 of resolution 1521 (2003).

(iv) *Democratic People's Republic of Korea*

On 12 June 2009, the Security Council adopted resolution 1874 (2009), by which it condemned in the strongest terms the nuclear test conducted by the Democratic People's Republic of Korea on 25 May 2009 in violation and flagrant disregard of its relevant resolutions, in particular resolutions 1695 (2006) and 1718 (2006), and the statement of its

[43] Final report of the Panel of Experts on Liberia submitted pursuant to paragraph 4 (e) of Security Council resolution 1854 (2008), 11 December 2009 (S/2009/640).

President of 13 April 2009.[44] The Security Council *inter alia* demanded that the Democratic People's Republic of Korea not conduct any further nuclear test or any launch using ballistic missile technology and immediately comply fully with its obligations under relevant Security Council resolution. It further called upon all Member States to implement their obligations pursuant to pursuant to resolution 1718 (2006), including with respect to designations made by the Committee established pursuant to resolution 1718 (2006). The Council decided that the measures in paragraph 8 (a) and (b) of resolution 1718 (2006) shall also apply to all arms and related materiel, as well as to financial transactions, technical training, advice, services or assistance related to the provision, manufacture, maintenance or use of such arms or materiel, except for small arms and light weapons and their related materiel. It also decided to authorize all Member States to, and that all Member States shall, seize and dispose of items the supply, sale, transfer, or export of which is prohibited by paragraph 8 (a), (b) and (c), of resolution 1718 (2009) or by paragraph 9 or 10 of resolution 1874 (2009) that are identified in inspections pursuant to the same resolution. It further decided that Member States shall prohibit the provision by their nationals or from their territory of bunkering services or ther servicing of vessels to the Democratic People's Republic of Korea if they have information that provides reasonable grounds to believe they are carrying items the supply, sale, transfer, or export of which is prohibited by resolution 1718 (2006) or resolution 1874 (2009).

(v) *Measures with respect to Al-Qaida, Usama bin Laden and the Taliban, and other individuals, groups, undertakings and entities associated with them*[45]

On 27 December 2009, the Security Council adopted resolution 1904 (2009), by which it decided that all States shall take the measures as previously imposed by paragraph 4 (b) of resolution 1267 (1999), paragraph 8 (c) of resolution 1333 (2000), and paragraphs 1 and 2 of resolution 1390 (2002), with respect to Al-Qaida, Usama bin Laden and the Taliban, and other individuals, groups, undertakings and entities associated with them, as referred to in the list created pursuant to resolutions 1267 (1999) and 1333 (2000), including to freeze without delay the funds and other financial assets or economic resources of these individuals, groups, undertakings and entities, including funds derived from property owned or controlled directly or indirectly, by them or by persons acting on their behalf or at their direction; to deny the entry into or transit through their territories of these individuals, provided that this does not oblige any State to deny entry or require the departure from its territories of its own nationals or where entry or transit is necessary for the fulfilment of a judicial process, or the Committee determines on a case-by-case basis that entry or transit is justified. States were further to prevent the direct or indirect supply, sale, or transfer to these individuals, groups, undertakings and entities from their territories or by their nationals outside their territories, or using their flag vessels or aircraft, of arms and related materiel of all types including weapons and ammunition, military vehicles and equipment, paramilitary equipment, and spare parts for the aforementioned, and technical advice, assistance, or training related to military activities.

---

[44] S/PRST/2009/7.

[45] On measures to eliminate terrorism, see further the section on terrorism below.

(vi) *Eritrea*

By resolution 1907 (2009) of 23 December 2009, the Security Council decided that all Member States shall immediately take the necessary measures to prevent the sale or supply to Eritrea by their nationals or from their territories or using their flag vessels or aircraft, of arms and related materiel of all types, including weapons and ammunition, military vehicles and equipment, paramilitary equipment, and spare parts for the aforementioned, and technical assistance, training, financial and other assistance, related to the military activities or to the provision, manufacture, maintenance or use of these items, whether or not originating in their territories; and that all Member States shall prohibit the procurement of such items, training and assistance from Eritrea by their nationals, or using their flag vessels or aircraft, whether or not originating in the territory of Eritrea. The Council further decided that Eritrea shall not supply, sell or transfer directly or indirectly from its territory or by its nationals or using its flag vessels or aircraft, any arms or related materiel.

In the same resolution, the Council decided that all Member States shall take the necessary measures to prevent the entry into or transit through their territories of individuals, designated by the Committee established pursuant to resolution 751 (1992) and expanded by resolution 1844 (2008) as, *inter alia,* providing support from Eritrea to armed opposition groups which aim to destabilize the region, obstructing implementation of resolution 1862 (2009) concerning Djibouti, or as harbouring, financing, facilitating, supporting, organizing, training, or inciting individuals or groups to perpetrate acts of violence or terrorist acts against other States or their citizens in the region. It further decided that such measures would not apply where the Committee determines on a case-by-case basis that such travel is justified on the grounds of humanitarian need, including religious obligation, or where the Committee determines on a case-by-case basis that an exemption would otherwise further the objectives of peace and stability in the region.

Further, the Security Council decided that all Member States shall take the necessary measures to prevent the direct or indirect supply, sale or transfer by their nationals or from their territories or using their flag vessels or aircraft of arms and related materiel of all types, including weapons and ammunition, military vehicles and equipment, paramilitary equipment, and spare parts for the aforementioned 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 or to the supply, sale, transfer, manufacture, maintenance or use of weapons and military equipment, to the individuals or entities designated by the Committee. It further decided that that all Member States shall freeze without delay the funds, other financial assets and economic resources which are on their territories that are owned or controlled, directly or indirectly, by the entities and individuals designated by the Committee.

(*h*) Terrorism

Security Council Committees

a. Al-Qaida and Taliban Sanctions Committee

The Al-Qaida and Taliban Sanctions Committee was established pursuant to Security Council resolution 1267 (1999) of 15 October 1999. By resolution 1904 (2009) of 17 Decem-

ber 2009, the Security Council directed the Committee to make accessible on the Committee's website, at the same time a name is added to the Consolidated List, a narrative summary of reasons for listing for the corresponding entry or entries; and to amend its Guidelines to extend the period of time for members of the Committee to verify that names proposed for listing merit inclusion in the Consolidated List; and to include adequate identifying information to ensure full implementation of the measures, with exceptions, at the Committee chair's discretion, for emergency and time-sensitive listings. The Committee was further directed to identify possible cases of non-compliance by Member States with the measures imposed by resolutions paragraph 4 (b) of resolution 1267 (1999), paragraph 8 (c) of resolution 1333 (2000), and paragraphs 1 and 2 of resolution 1390 (2002), and to determine the appropriate course of action on each case.

In the same resolution, the Security Council decided that, when considering delisting requests, the Committee shall be assisted by an Office of the Ombudsperson, to be established for an initial period of 18 months.

b. Counter-Terrorism Committee

The Counter-Terrorism Committee was established pursuant to Security Council resolution 1373 (2001) of 28 September 2001. The Committee continued its operation through 2009, and submitted two reports to the Security Council.[46]

c. 1540 Committee (non-proliferation of weapons of mass destruction)

On 28 April 2004, the Security Council adopted resolution 1540 (2004), by which it decided that all States shall refrain from providing any form of support to non-State actors that attempt to develop, acquire, manufacture, possess, transport, transfer or use nuclear, chemical or biological weapons and their means of delivery; and established a Committee to report on the implementation of the same resolution. The mandate of the Committee was subsequently extended by resolutions 1673 (2006) and 1810 (2008), respectively. The Committee continued its operation through 2009.

d. Lebanon

The International Independent Investigation Commission was established pursuant to Security Council resolution 1595 (2005) of 7 April 2005, in order to assist the Lebanese authorities in their investigation of all aspects of the 14 February 2005 terrorist attack in Lebanon, including to help identify its perpetrators, sponsors, organizers and accomplices. The mandate of the Commission, most recently renewed by Security Council resolution 1852 (2008), expired on 28 February 2009. The Special Tribunal for Lebanon began to operate on 1 March 2009.[47]

---

[46] Report of the Counter-Terrorism Committee to the Security Council for its consideration as part of its interim review of the work of the Counter-Terrorism Committee Executive Directorate, 4 June 2009 (S/2009/289); and Survey of the Implementation of Security Council resolution 1373 (2001) by Member States, 13 November 2009 (S/2009/620).

[47] For information on the activities of the Special Tribunal for Lebanon, see chapter VII of this publication.

(*i*) Humanitarian law and human rights in the context of peace and security

(i) *Children and armed conflict*

In resolution 1882 (2009), adopted on 4 August 2009, the Security Council, *inter alia*, strongly condemned all violations of applicable international law involving the recruitment and use of children by parties to armed conflict as well as their re-recruitment, killing and maiming, rape and other sexual violence, abductions, attacks against schools or hospitals and denial of humanitarian access by parties to armed conflict, and all other violations of international law committed against children in situations of armed conflict. The Council invited the Secretary-General through his Special Representative for Children and Armed Conflict to exchange appropriate information and maintain interaction from the earliest opportunity with the Governments concerned regarding violations and abuses committed against children by parties which may be included in the annexes to his periodic report; and encouraged Member States to devise ways, in close consultations with the United Nations country-level task force on monitoring and reporting and United Nations country teams, to facilitate the development and implementation of time-bound action plans, and the review and monitoring by the United Nations country-level task force of obligations and commitments relating to the protection of children in armed conflict. The Council further requested Member States, United Nations peacekeeping, peacebuilding and political missions and United Nations country teams, within their respective mandates and in close cooperation with Governments of the concerned countries, to establish appropriate strategies and coordination mechanisms for information exchange and cooperation on child protection concerns, in particular cross-border issues, bearing in mind relevant conclusions by the Security Council Working Group on Children and Armed Conflict and paragraph 2 (d) of its resolution 1612 (2005).

(ii) *Protection of civilians in armed conflict*

On 11 November 2009, the Security Council adopted resolution 1894 (2009), in which it demanded that parties to armed conflict comply strictly with the obligations applicable to them under international humanitarian, human rights and refugee law, as well as to implement all relevant decisions of the Security Council; and in this regard, urged them to take all required measures to respect and protect the civilian population and meet its basic needs. The Council noted that the deliberate targeting of civilians as such and other protected persons, and the commission of systematic, flagrant and widespread violations of applicable international humanitarian and human rights law in situations of armed conflict may constitute a threat to international peace and security, and reaffirmed in this regard its readiness to consider such situations and, where necessary, to adopt appropriate steps.

In the same resolution, the Council called upon all parties concerned, *inter alia*, to ensure the widest possible dissemination of information about international humanitarian, human rights and refugee law; to ensure that orders and instructions issued to armed forces and other relevant actors are in compliance with applicable international law, and that they are observed, *inter alia*, by establishing effective disciplinary procedures, central to which must be the strict adherence to the principle of command responsibility to support compliance with international humanitarian law; and to seek, where appropriate, support from United Nations peacekeeping and other relevant missions, as well as

United Nations Country Teams and the International Committee of the Red Cross on training and awareness raising on international humanitarian, human rights and refugee law. The Council also stressed the importance for all, within the framework of humanitarian assistance, of upholding and respecting the humanitarian principles of humanity, neutrality, impartiality and independence, and the importance for all parties to armed conflict to cooperate with humanitarian personnel in order to allow and facilitate access to civilian populations affected by armed conflict.

(iii) *Women and peace and security*

In 2009, the Security Council adopted two resolutions on women and peace and security, both of which are described below.

On 30 September 2009, the Security Council adopted resolution 1888 (2009), by which it reaffirmed 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 demanded that all parties to armed conflict immediately take appropriate measures to protect civilians, including women and children, from all forms of sexual violence, including measures such as, *inter alia*, enforcing appropriate military disciplinary measures and upholding the principle of command responsibility, training troops on the categorical prohibition of all forms of sexual violence against civilians, debunking myths that fuel sexual violence, and vetting candidates for national armies and security forces to ensure the exclusion of those associated with serious violations of international humanitarian and human rights law, including sexual violence.

The Council urged States to undertake comprehensive legal and judicial reforms, as appropriate, in conformity with international law, without delay and with a view to bringing perpetrators of sexual violence in conflicts to justice and to ensuring that survivors have access to justice, are treated with dignity throughout the justice process and are protected and receive redress for their suffering. All parties to a conflict were further urged to ensure that all reports of sexual violence committed by civilians or by military personnel are thoroughly investigated and the alleged perpetrators brought to justice, and that civilian superiors and military commanders, in accordance with international humanitarian law, use their authority and powers to prevent sexual violence, including by combating impunity. The Council encouraged leaders at the national and local level, including traditional leaders where they exist and religious leaders, to play a more active role in sensitizing communities on sexual violence to avoid marginalization and stigmatization of victims, to assist with their social reintegration, and to combat a culture of impunity for these crimes.

The Security Council further encouraged Member States to deploy greater numbers of female military and police personnel to United Nations peacekeeping operations, and to provide all military and police personnel with adequate training to carry out their responsibilities; and 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.

In resolution 1889 (2009), adopted on 5 October 2009, the Security Council urged Member States, international and regional organizations to take further measures to improve women's participation during all stages of peace processes, particularly in conflict resolution, post-conflict planning and peacebuilding, including by enhancing their engagement in political and economic decision-making at early stages of recovery processes, through *inter alia* promoting women's leadership and capacity to engage in aid management and planning, supporting women's organizations, and countering negative societal attitudes about women's capacity to participate equally. The Council called upon the Secretary-General to develop a strategy, including through appropriate training, to increase the number of women appointed to pursue good offices on his behalf, particularly as Special Representatives and Special Envoys, and to take measures to increase women's participation in United Nations political, peacebuilding and peacekeeping missions. Further, the Council urged Member States, United Nations bodies, donors and civil society to ensure that women's empowerment is taken into account during post-conflict needs assessments and planning, and factored into subsequent funding disbursements and programme activities, including through developing transparent analysis and tracking of funds allocated for addressing women's needs in the post-conflict phase.

(*j*) Piracy[48]

On 30 November 2009, the Security Council adopted resolution 1897 (2009), in which it reiterated that it condemned and deplored all acts of piracy and armed robbery against vessels in the waters off the coast of Somalia; and renewed its call upon States and regional organizations that have the capacity to do so to take part in the fight against piracy and armed robbery at sea off the coast of Somalia, in particular, consistent with this resolution and international law, by deploying naval vessels, arms and military aircraft and through seizures and disposition of boats, vessels, arms and other related equipment used in the commission of piracy and armed robbery at sea off the coast of Somalia, or for which there are reasonable grounds for suspecting such use. The Council acknowledged Somalia's rights with respect to offshore natural resources, including fisheries, in accordance with international law, and called upon States and interested organizations, including the International Maritime Organization (IMO), to provide technical assistance to Somalia, including regional authorities, and nearby coastal States upon their request to enhance their capacity to ensure coastal and maritime security, including combating piracy and armed robbery at sea off the Somali and nearby coastlines.

By the same resolution, States and international or regional organizations fighting piracy off the coast of Somalia were invited 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, in particular countries in the region, to facilitate the investigation and prosecution of persons detained as a result of operations conducted under this resolution for acts of piracy and armed robbery at sea off the coast of Somalia, provided that the advance consent of the Transitional Federal Government is obtained for the exercize of third state jurisdiction by shipriders in Somali territorial waters and that such agreements or arrangements do not prejudice the effective imple-

[48] See also on piracy section (b) (ii) e of chapter III B of this publication.

mentation of the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, 1988.[49]

3. Disarmament and related matters[50]

(*a*) Disarmament machinery

(i) *Disarmament Commission*

The United Nations Disarmament Commission, 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 2009 session in New York, held from 13 April to 1 May 2009, the Commission adopted the agenda which included the item "Elements of a draft declaration of the 2010s as the fourth disarmament decade", and the item "Practical confidence-building measures in the field of conventional weapons" which would be taken up upon the conclusion of the former item. The Secretary-General transmitted to the Commission the annual report of the Conference on Disarmament,[51] together with all the official records of the sixty-third session of the General Assembly relating to disarmament matters. During the substantive session, Working Group I held extensive discussion on the item "Recommendations for achieving the objective of nuclear disarmament and non-proliferation of nuclear weapons"; and Working Group II considered the item "Elements of a draft declaration of the 2010s as the fourth disarmament decade". At its 301st plenary meeting, on 1 May 2009, the Commission adopted by consensus the reports submitted by its two Working Groups[52]. At the same meeting, the Commission adopted, as a whole, its own report to be submitted to the General Assembly at its sixty-fourth session.[53]

(ii) *Conference on Disarmament*[54]

The Conference on Disarmament held three sessions in 2009; from 19 January to 27 March, 18 May to 3 July and 3 August to 18 September 2009, respectively. On 29 May 2009, the Conference adopted the Programme of Work for the 2009 session, [55] in which it decided to establish a working group to begin negotiations on a treaty banning the production of fissile materials for nuclear weapons. The Programme of Work also included the establishment of working groups to discuss the following issues: cessation of the nuclear arms race and nuclear disarmament; prevention of an arms race in outer space; and effective inter-

---

[49] United Nations, *Treaty Series*, vol. 1678, p. 201.

[50] For detailed information, see *United Nations Disarmament Yearbook*, vol. 34:2009 (United Nations publication, Sales No. E.10.IX.1). The *Yearbook* can also be downloaded, free of charge, at http://www.un.org/disarmament/HomePage/ODAPublications/Yearbook.

[51] *General Assembly, Official Records, Sixty-fourth session, Supplement No. 27* (A/64/27).

[52] A/CN.10/2010/CRP.3 and A/CN.10/2010/CRP.4

[53] A/64/42

[54] 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.

[55] *See* Decision for the establishment of a Programme of Work for the 2009 session (CD/1864).

national arrangements to assure non-nuclear-weapon States against the use or threat of use of nuclear weapons. Special coordinators would also be appointed to seek the views of members on issues including new types of weapons of mass destruction and new systems of such weapons, radiological weapons, a comprehensive program of disarmament, and transparency in armaments. On 17 September 2009, the Conference adopted its annual report and transmitted it to the General Assembly for its consideration.[56]

(iii) *General Assembly*

On 2 December 2009, 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 64/64, entitled "Report of the Conference on Disarmament", the General Assembly welcomed the consensus adoption of a programme of work for the 2009 session of the Conference on Disarmament, including the establishment of four working groups and the appointment of three special coordinators. It also took note of the active discussions held on the implementation of the programme of work at the 2009 session, and further requested all States members of the Conference on Disarmament to cooperate with the current President and successive Presidents in their efforts to guide the Conference to the early commencement of substantive work, including negotiations, in its 2010 session.

In resolution 64/65, entitled "Report of the Disarmament Commission", the General Assembly took note of the report of the Disarmament Commission and requested it to continue its work in accordance with its mandate, and to that end to make every effort to achieve specific recommendations on the items on its agenda, taking into account the adopted "Ways and means to enhance the functioning of the Disarmament Commission".[57] The Assembly further recommended that the Commission continue the consideration of the following items at its substantive session of 2010: (a) the recommendations for achieving the objective of nuclear disarmament and non-proliferation of nuclear weapons; (b) the elements of a draft declaration of the 2010s as the fourth disarmament decade; and (c) the practical confidence-building measures in the field of conventional weapons.

In decision 64/154, the General Assembly decided to include in the provisional agenda of its sixty-fifth session the item 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[58] (NPT) held its third and last session from 4 to 15 May 2009 in New York. The Committee held 25 meetings on substantive

[56] A/64/27.

[57] A/CN.10/137.

[58] United Nations, *Treaty Series*, vol. 729, p. 161.

discussions on three clusters of issues[59] and three specific blocs of issues.[60] The Committee considered the draft rules of procedure for the Conference and agreed to recommend to the Conference the draft rules of procedure as contained in its report. It also decided to change the dates of the 2010 Review Conference, which were originally decided at the first session. On 15 May 2009, at the last meeting, the Committee adopted its final report.[61]

On 28 September 2009, the International Atomic Energy Agency (IAEA) hosted the first Extraordinary Meeting of Contracting Parties of the Convention on Nuclear Safety,[62] pursuant to article 31, paragraph 9 (i), of the Convention. The Meeting reviewed and adopted the revised version of the "Guidelines regarding National Reports under the Convention on Nuclear Safety".[63] The Contracting Parties agreed to provide their endorsement within two months after the circulation of the revised guidelines, which would help finalizing the process and allow Contracting Parties to rely on in preparation of their participation for the fifth Review Meeting of the Contracting Parties of the Convention on Nuclear Safety.[64]

The fifth Organizational Meeting of the Contracting Parties of the Convention on Nuclear Safety was held on 29 September 2009 in Vienna, in which 46 out of 65 Contracting Parties participated. The Meeting decided on the agenda for the fifth Review Meeting and examined the credentials of participating delegations. It further decided to establish six Country Groups for the fifth Review Meeting and assigned Presidents for the Review Meeting and for the individual Country Groups.[65]

The IAEA also held its 53rd General Conference of Member States from 14 to 18 September 2009, in Vienna. As the Conference began, the Conference approved the appointment of Yukiya Amano of Japan as the next IAEA Director General, for a term of office from December 2009 to November 2013.[66] At the Conference, the Member States adopted nineteen resolutions and three decisions[67] backing the IAEA's work in key areas.

During 2009, the Director General of the IAEA submitted four reports[68] to the Board of Governors on the implementation of the NPT Safeguards Agreement and relevant provisions of the United Nations Security Council resolutions in the Islamic Republic of Iran.

---

[59] The cluster issues were the implementation of the provisions of the Treaty relating to, first, Non-Proliferation of nuclear weapons, disarmament and international peace and security; second, Non-Proliferation of nuclear weapons, safeguards and nuclear-weapon-free zones; and third, the inalienable right of all States parties to develop research, production and use of nuclear energy for peaceful purpose.

[60] The blocs of issues included, first, the nuclear disarmament and security assurance; second, regional issues and third, other provisions of the Treaty.

[61] NPT/CONF.2010/1.

[62] The Convention on Nuclear Safety was adopted on 17 June 1994 by a Diplomatic Conference convened by the IAEA at its Headquarters from 14 to 17 June 1994. It entered into force on 24 October 1996. United Nations, *Treaty Series*, vol. 1963, p. 293.

[63] INFCIRC/572/Rev.3.

[64] See CNS/ExM/2009/3.

[65] See CNS/OM.5/P.08.

[66] GC(53)/RES/3.

[67] General Conference resolution GC(53)/RES/1–19 and decision GC(53)/DEC/11–13.

[68] See reports by the Director General GOV/2009/8, GOV/2009/35, GOV/2009/55 and GOV/2009/74.

On 27 November 2009, the Board of Governors adopted resolution GOV/2009/82, in which it noted, *inter alia*, that the Director General had repeatedly declared that he had been unable to verify that Iran's programme was for exclusively peaceful purposes. With regard to the verification activities in the Democratic People's Republic of Korea, the IAEA ceased the implementation of the *ad hoc* monitoring and verification arrangement in the country on 15 April 2009. Thus, the IAEA had not been able to provide any conclusions regarding the nuclear activities in the Democratic People's Republic of Korea.

With regard to the Comprehensive Nuclear-Test-Ban Treaty[69] (CTBT), the sixth Conference on Facilitating the Entry into Force of the Comprehensive Nuclear-Test-Ban Treaty was convened pursuant to article XIV of the CTBT on 24 and 25 September 2009. The Conference adopted the Final Declaration and Measures to Promote the Entry into Force of the CTBT, in which it reaffirmed, *inter alia*, the firm determination to end nuclear weapon test explosions and any other nuclear explosions, and called upon all States which had not yet done so to sign and ratify the CTBT without delay, in particular, those States whose ratification was needed for the entry into force.[70]

(i) General Assembly

On 2 December 2009, the General Assembly adopted, upon the recommendation of the First Committee, eighteen resolutions and one decision concerning nuclear weapons and non-proliferation issues,[71] of which four are described below.

In resolution 60/27, entitled "Conclusion of effective international arrangements to assure non-nuclear-weapon States against the use or threat of use of nuclear weapons", the General Assembly recommended that further intensive efforts be devoted to the search for a common approach or common formula and that the Conference on Disarmament actively continue intensive negotiations with a view to reaching early agreement and to concluding effective international agreements with regard to this matter.

In resolution 64/29, entitled "Treaty banning the production of fissile material for nuclear weapons or other nuclear explosive devices", the General Assembly urged the Conference on Disarmament to agree early in 2010 on a programme of work that would include the immediate commencement of negotiations on a treaty banning the production of fissile material for nuclear weapons or other nuclear explosive devices.

In resolution 64/47, entitled "Renewed determination towards the total elimination of nuclear weapons", the General Assembly called upon all nuclear-weapon States and States not parties to the NPT to declare and maintain moratoriums on the production of fissile material for any nuclear weapons or other nuclear explosive devices pending the entry into force of a fissile material cut-off treaty.

In resolution 64/57, entitled "Towards a nuclear-weapon-free world: accelerating the implementation of nuclear disarmament commitments", the General Assembly urged the Democratic People's Republic of Korea to rescind its announced withdrawal from the NPT,

[69] A/50/1027, Annex.

[70] CTBT-Art.XIV/2009/6.

[71] General Assembly resolutions 64/24, 64/26, 64/27, 64/29, 64/31, 64/35, 64/37, 64/39, 64/44, 64/45, 64/47, 64/52, 64/53, 64/55, 64/57, 64/59, 64/66 and 64/69 and decision 64/516.

to re-establish cooperation with the IAEA and to rejoin the Six-Party Talks, with a view to achieving the denuclearization of the Korean Peninsula in a peaceful manner. It further called upon all parties to the NPT to spare no effort to ensure a successful and constructive outcome of the 2010 Review Conference.

(ii) Security Council

On 24 September 2009, the Security Council adopted resolution 1887 (2009), in which, resolving to seek a safer world for all and to create the conditions for a world without nuclear weapons, it reaffirmed that proliferation of weapons of mass destruction, and their means of delivery, constituted a threat to international peace and security. It called upon all States that were not parties to the NPT to accede to it and upon States parties to the NPT to pursue negotiations on effective measures relating to nuclear arms reduction and disarmament and on a treaty on general and complete disarmament. It also called on all States to refrain from conducting a nuclear test explosion and to sign and ratify the CTBT; and to negotiate a treaty banning the production of fissile material for nuclear weapons or other nuclear explosive devices as soon as possible. The Security Council further affirmed the essential role of the effective IAEA safeguards measures and called upon all non-nuclear-weapon States to bring into force a comprehensive safeguards agreement or a modified small quantities protocol immediately. Moreover, the Security Council reaffirmed the need for full implementation of resolution 1540 (2004) and called upon Member States to cooperate actively with the Committee established pursuant to the resolution and with the IAEA.

(*c*) Biological and chemical weapons issues

In accordance with the decision of the Sixth Review Conference of the States Parties to the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction[72] (Biological Weapon Convention), the Meeting of Experts was held in Geneva from 24 to 28 August 2009, and the Meeting of States Parties was held from 7 to 11 December 2009. With a view to enhancing international cooperation, assistance and exchange in biological sciences and technology for peaceful purposes, discussions were devoted to the consideration of promoting capacity building in the fields of disease surveillance, detection, diagnosis and containment of infectious diseases: (1) for States Parties in need of assistance, identifying requirements and requests for capacity enhancement; and (2) from States Parties in a position to do so, and international organizations, opportunities for providing assistance related to these fields.

The Meeting of Experts heard an interim report[73] from the Chairman on activities to secure universal adherence to the Biological Weapons Convention,[74] in accordance with the decision of the Sixth Review Conference. At its closing meeting, on 28 August 2009, the

[72] United Nations, *Treaty Series*, vol. 1015, p. 163.

[73] Available at http://www.unog.ch/80256EDD006B8954/(httpAssets)/6141D72B0C21F1B0C12576230053E011/$file/BWC+MX+2009+-+Universalization+Report.pdf.

[74] United Nations, *Treaty Series*, vol. 1015, p. 163.

Meeting of Experts adopted its own report by consensus.[75] At the subsequent Meeting of the States Parties, whilst recognizing the importance of developing effective infrastructure for disease surveillance, detection, diagnosis and containment, States parties agreed on the value of developing human resources and ensuring sustainability in this regard, and on the value of implementing standard operating procedures and improving integration of capacity–building activities. They further considered the Report from the Chairman on Universalization Activities[76] on obtaining universality for the Biological Weapons Convention, as well as the 2009 Report of the Implementation Support Unit[77] with regard to confidence-building measures. At its closing meeting, on 11 December 2009, the Meeting of States Parties adopted its report by consensus.[78]

With regard to chemical weapons, the fourteenth session of the Conference of the States Parties to the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction[79] (Chemical Weapons Convention) was held in The Hague, from 30 November to 4 December 2009. The issues considered included the status of implementation of the Chemical Weapons Convention, fostering of international cooperation for peaceful purposes in the field of chemical activities, and ensuring the universality of the Chemical Weapons Convention. Among others, the Conference urged all possessor States parties to take every necessary measure with a view to ensuring their compliance with the final extended destruction deadline of 29 April 2012. The Conference considered and adopted the report of its fourteenth session.[80]

General Assembly

On 2 December 2009, the General Assembly adopted, upon the recommendation of the First Committee, resolution 64/46 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 emphasized that the universality of the Convention was fundamental to the achievement of its objective and purpose, and stressed that the full and effective implementation of all provisions of the Chemical Weapons Convention constituted an important contribution to the efforts of the United Nations in the global fight against terrorism in all its forms and manifestations. In this context, all States parties 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.

On the same day, the General Assembly also adopted, on the recommendation of the First Committee, resolution 64/70 entitled "Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and Their Destruction", in which it urged States parties to continue to work closely with the

[75] BWC/MSP/2009/MX/3.

[76] BWC/MSP/2009/4.

[77] BWC/MSP/2009/2.

[78] BWC/MSP/2009/5.

[79] United Nations, *Treaty Series*, vol. 1974, p. 45.

[80] C-14/5.

Implementation Support Unit of the Office for Disarmament Affairs of the Secretariat in fulfilling its mandate, in accordance with the decision of the Sixth Review Conference.

(*d*) Conventional weapons issues

The Second Review Conference of the States Parties to the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-personnel Mines and Their Destruction[81] (Mine-Ban Convention) was held in Cartagena, Colombia, from 30 November to 4 December 2009. Two Preparatory Meetings were held in advance on 29 May 2009 and on 3 and 4 September 2009. The Second Review Conference considered the issues of the operation and status of the Mine-Ban Convention and the requests for extensions of the deadline for completing the destruction of anti-personnel mines in accordance with article 5 of the Mind-Ban Convention. It adopted "A shared commitment for a mine-free world: The 2009 Cartagena Declaration",[82] in which States parties reaffirmed their commitment to ending the suffering caused by anti-personnel mines and to achieving a world free of mines. The Conference also adopted the "Cartagena Action Plan 2010–2014: Ending the Suffering Caused By Anti-Personnel Mines",[83] where States parties committed to undertaking a range of specific actions during the next five years in order to strengthen implementation of and to promote universal adherence to the Mine-Ban Convention.

With regard 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[84] (Convention on Conventional Weapons), the Governmental Group of Experts (GGE) met for two sessions, from 16 to 20 February and from 14 to 17 April 2009. The GGE considered a wide range of issues on the general prohibitions and restrictions, and on the protection of civilian population and civilian objects. An informal consultation was also held from 17 to 21 August 2009 to further the work on the issue of cluster munitions. The GGE was not able to reach a common view on a proposal on cluster munitions, but the Chairperson of the GGE presented, in his personal capacity, a text of a draft protocol on cluster munitions[85] for the consideration of the issue at the Meeting of the High Contracting Parties to the Convention on Conventional Weapons.

The Meeting of the High Contracting Parties to the Convention on Conventional Weapons was held in Geneva on 12 and 13 November 2009.[86] The High Contracting Parties emphasized the importance of achieving universal adherence to, and compliance with, the Convention and its protocols, and took note of the two reports, presented orally, on the implementation of the Plan of Action to Promote the Universality of the Convention and on the implementation of the Sponsorship Programme. The Meeting also decided to establish a Convention on Conventional Weapons Implementation Support Unit, which would work under the authority of the annual Meetings of the High Contracting Parties.

---

[81] United Nations, *Treaty Series*, vol. 2056, p. 211.

[82] APLC/CONF/2009/WP.8.

[83] APLC/CONF/2009/WP.1/Rev.1.

[84] United Nations, *Treaty Series,* vol. 1342, p. 137.

[85] CCW/MSP/2009/WP.1.

[86] For the report of the Meeting of High Contracting State Parties to the Convention on Conventional Weapons, see CCW/MSP/2009/5.

They decided to keep the issue of mines other than anti-personnel mines (MOTAPM) under consideration under the overall responsibility of the Chairperson-designate. The High Contracting Parties also considered the report of the work of GGE and took note of the report on the negotiation in GGE, including the draft protocol on cluster munitions.

With regard to the Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices[87] (Amended Protocol II), the first session of the Group of Experts was held in Geneva on 20 and 21 April 2009, in accordance with the decision of the Tenth Annual Conference of the High Contracting Parties to the Amended Protocol.[88] The main focus of the Group of Experts was to review the operation and status of the Protocol, to consider matters arising from reports by High Contracting Parties as well as the development of technologies to protect civilians against indiscriminate effects of mines, and to address the issue of improvised explosive devices.[89]

The Eleventh Annual Conference of the High Contracting Parties to the Amended Protocol II was held in Geneva on 11 November 2009.[90] The Conference decided to issue an appeal to call upon all States that had not yet done so to take all measures to accede to Amended Protocol II as soon as possible.[91] It also took note of the reports of the two Friends of the President appointed to assist the work of the Group of Experts.[92] Under the current frame of work, the Conference decided that the Group of Experts should further analyze the implementation of the reporting obligations by the States parties and the content of their national annual reports; consider the legal possibility and the feasibility of terminating the original Protocol II, and explore possible practical steps to address the challenges posed by improvised explosive devices.

In addition, the Third Conference of the High Contracting Parties to Protocol V on Explosive Remnants of War was held in Geneva on 9 and 10 November 2009. The Conference considered the work of the Meeting of Experts which was held from 22 to 24 April 2009. The Conference, *inter alia*, took note of the concept for a Web-based Information System for Protocol V (WISP.V) and decided to launch the development of the WISP.V, in cooperation with United Nations Office in Geneva and the Convention on Conventional Weapons Secretariat. It also approved the draft "Guide to National Reporting under CCW Protocol V". At its fourth plenary meeting, the Conference adopted its final document.[93]

---

[87] CCW/CONF.I/16 (Part I).

[88] Final Document of the Tenth Annual Conference of the High Contracting Parties to the Amended Protocol, CCW/AP.II/CONF.10/2.

[89] See discussion papers CCW/AP.II/GX/2010/1, CCW/AP.II/GX/2010/2 and CCW/AP.II/GX/2010/3.

[90] For the final document of the Conference, see CCW/AP.II/CONF.11/4.

[91] *Ibid.,* Conclusions and recommendations.

[92] Report by Mr. Reto Wollenmann of Switzerland, Friend of the President on Improvised Explosive Devices (IEDs), as contained in CCW/AP.II/CONF.11/2; and the report by Mr. Abderrazzak Laassel of Morocco, Friend of the President on the operation and status of the Protocol, on matters arising from reports by High Contracting Parties according to Article 13 (4) of Amended Protocol II, as well as on development of technologies to protect civilians against indiscriminate effects of mines, as contained in CCW/AP.II/CONF.11/3.

[93] CCW/P.V/CONF/2009/9.

General Assembly

On 2 December 2009, the General Assembly adopted, on the recommendation of the First Committee, seven resolutions dealing with conventional arms issues,[94] of which two are highlighted below.

In resolution 64/48, entitled "The arms trade treaty", the General Assembly recognized that the absence of commonly agreed international standards for the transfer of conventional arms had been a contributory factor to armed conflict, the displacement of people, and organized crime and terrorism, thereby undermining peace, reconciliation, safety, security, stability and sustainable social and economic development. It decided to convene a United Nations Conference on the Arms Trade Treaty to meet in 2012 to elaborate a legally binding instrument on the highest possible common international standards for the transfer of conventional arms, and stressed the need to ensure the widest possible and effective participation in the conference.

In resolution 64/50, entitled "The illicit trade in small arms and light weapons in all its aspects", the General Assembly, emphasizing the importance of the continued and full implementation of the Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects,[95] decided that the fourth biennial meeting of States to consider the national, regional and global implementation of the Programme of Action should be held in New York from 14 to 18 June 2010. It further called upon all States to implement the International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons.[96]

(*e*) Regional disarmament activities of the United Nations

(i) *Africa*

In 2009, the United Nations Regional Centre for Peace and Disarmament in Africa continued to implement its mandate through various activities in support of disarmament initiatives in Africa region. The Centre continued to implement the project "African security sector reform programme" which aimed at strengthening security and stability and promoting intervention by security forces within a democratic framework.

In 2009, the Centre served as the secretariat of the United Nations Standing Advisory Committee on Security Questions in Central Africa (UNSAC), in which capacity it provided substantive and technical secretariat services for the twenty-eighth ministerial meeting of UNSAC, held in Libreville, Gabon, from 4 to 8 May 2009. It also participated in the 200th meeting of the Peace and Security Council of the African Union held in Addis Ababa, Ethiopia, on 21 August 2009.

On 9 and 10 June 2009, the Centre also provided technical expertise and logistical support for a seminar on transparency in the transfer of conventional arms in West Africa. The Centre offered a regional perspective and advocated coherent and universal participa-

[94] General Assembly resolutions 64/30, 64/36, 64/48, 64/50, 64/51, 64/56 and 64/67.

[95] Report of the United Nations Conference on the Illicit Trade in Small Arms and Light Weapons in All Its Aspects, New York, 9–20 July 2001 (A/CONF.192/15).

[96] A/60/88 and Corr.2, annex and decision 60/519.

tion in the United Nations Register of Conventional Arms.[97] Also in June 2009, the Centre and the Office for Disarmament Affairs organized a meeting of Southern and East African States to discuss the outcome of and ensure follow-up of the decisions of the third Biennial Meeting[98] of States to Consider the Implementation of the Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Aspects. Further, the Centre and the Office of the High Commissioner for Human Rights, with the participation of the Secretary-General's Special Representative for West Africa, jointly organized a discussion on the integration of the Conakry recommendations at the national level held in Togo, on 13 and 14 May 2009.

The UNSAC held its twenty-eighth ministerial meeting in Libreville, Gabon, from 4 to 8 May 2009. The States members of UNSAC discussed the geopolitical situation of the sub-region in general as well as recent development affecting some countries in particular. The member States concluded and adopted the Code of Conduct for the Defence and Security Forces in Central Africa on 8 May 2009.[99]

(ii) *Latin America and the Caribbean*

In 2009, the United Nations Regional Centre for Peace, Disarmament and Development in Latin America and the Caribbean carried out its mandate within the framework of its 2008–2011 Strategic Plan, and tailored its delivery of practical disarmament measures to the needs of the region by focusing on the issue of armed violence. In particular, the Centre continued to assist in building the capacity of States to implement multi-sectoral responses to combat illicit firearms trafficking. The Centre focused on activities such as law enforcement capacity-building initiatives, the destruction of firearms, the organization of courses and workshops, the development of practical diagnostics and the elaboration of innovative project proposals to address the challenges posed by armed violence. It also contributed to promoting interregional cooperation and multilevel responses to address armed violence, through promoting the conventional and small arms disarmament instrument and assisting countries of the region in the area of policy development. The Centre acted as a focal point in the field for the Coordinating Action on Small Arms mechanism, and collaborated with its principal partners, including the Organization of American States, the country offices of the United Nations Development Programme and the United Nations Office on Drug and Crime.[100]

---

[97] The United Nations Register of Conventional Arms was established on 1 January 1992 pursuant to General Assembly resolution 46/36 L, which should include data on international arms transfers as well as information provided by Member States on military holdings, procurement through national production and relevant policies.

[98] The Third Biennial Meeting of States to Consider the Implementation of the Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects was held at United Nations Headquarters in New York, from 14 to 18 July 2008. For the report of the Meeting, see A/CONF.192/BMS/2008/3.

[99] For the Report of the Secretary-General on the United Nations Standing Advisory Committee on Security Questions in Central Africa, see A/64/163.

[100] For the Report of the Secretary-General on the United Nations Regional Centre for Peace and Disarmament in Latin America and the Caribbean, see A/64/116.

(iii) *Asia and the Pacific*

In 2009, the United Nations Regional Centre for Peace, Disarmament and Development in Asia and the Pacific continued to promote disarmament and security dialogue and cooperation in the Asia and the Pacific region. The Centre organized a regional seminar on illicit brokering in small arms and light weapons in Central Asia and South Asia, held in Kathmandu, Nepal.

The Centre also sought to build a regional network of entities working on disarmament and security related issues and began exploring with relevant organizations and institutions possibilities of undertaking joint initiatives and projects in the region. In this context, it hosted a workshop for members of the International Action Network on Small Arms in Nepal. The Centre participated in the first South Asian Regional Conference on International Humanitarian Law and made a presentation on weapon treaties and international humanitarian law. It also participated in a regional meeting for Pacific island States on the Strengthening of the implementation of the United Nations Programme of Action on Small Arms and Light Weapons, held in Sydney, Australia.[101]

(iv) *General Assembly*

On 2 December 2009, the General Assembly adopted, on the recommendation of the First Committee, six resolutions dealing with regional disarmament,[102] of which two are highlighted below.

In resolution 64/42, entitled "Conventional arms control at the regional and subregional levels", the General Assembly, recognizing the crucial role of conventional arms control in promoting regional and international peace and security, decided to give urgent consideration to the issues involved in conventional arms control at the regional and subregional levels. It further requested the Conference on Disarmament to consider the formulation of principles that could serve as a framework for regional agreements on conventional arms control.

In resolution 64/43, entitled "Confidence-building measures in the regional and subregional context", the General Assembly reaffirmed the ways and means regarding confidence- and security-building measures set out in the report of the Disarmament Commission on its 1993 session[103] and called upon Member States to pursue these ways and means through sustained consultations and dialogue, while at the same time avoiding actions that may hinder or impair such a dialogue.

---

[101] For the Report of the Secretary-General on the United Nations Regional Centre for Peace and Disarmament in Asia and the Pacific, see A/64/111.

[102] General Assembly resolutions 64/23, 64/41, 64/42, 64/43, 64/61 and 64/68.

[103] A/48/42.

(*f*) Other issues

(i) *Terrorism and disarmament*

a. General Assembly

In the area of terrorism and disarmament, on 2 December 2009, the General Assembly adopted, upon the recommendation of the First Committee, resolution 64/38 entitled "Measures to prevent terrorists from acquiring weapons of mass destruction" and decision 64/516 entitled "Preventing the acquisition by terrorists of radioactive materials and sources". In the resolution, the General Assembly called upon all Member States to support international efforts to prevent terrorists from acquiring weapons of mass destruction and their means of delivery. It appealed to all Member States to consider early accession to and ratification of the International Convention for the Suppression of Acts of Nuclear Terrorism[104] and further urged them to take and strengthen national measures, as appropriate, to prevent terrorists from acquiring weapons of mass destruction, their means of delivery and materials and technologies related to their manufacture.

b. Security Council

On 4 June 2009, the Counter-Terrorism Committee, established pursuant to Security Council resolution 1373 (2001), submitted its report to the Security Council as part of the Council's interim review of the work of the Counter-Terrorism Committee Executive Directorate.[105] A "Technical guide to the implementation of Security Council resolution 1373 (2001)" was also compiled by the Counter-Terrorism Committee Executive Directorate.[106]

On 17 December 2009, the Security Council adopted resolution 1904 (2009).[107]

(ii) *Outer space*

During its 2009 session, the Conference on Disarmament held a general debate in plenary meetings on the issue of the prevention of an arms race in outer space, and decided to establish for that session a working group to discuss, substantially, without limitation, all issues related to the prevention of an arms race in outer space. The Coordinator on this agenda, held two informal meetings on the issue on 10 and 27 February 2009, and reported orally to the Conference. The discussion during the informal sessions focused on the transparency and confidence building measures and legally-binding instruments. In addition, the Secretary-General submitted its report on "Transparency and confidence-building measures in outer space activities", which contained the replies received form Governments on the issue.[108]

---

[104] Resolution 59/290, annex.

[105] The report is annexed to the letter dated 4 June 2009 from the Acting Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council (S/2009/289).

[106] Available at http://www.un.org/sc/ctc/pdf/Technical%20Guide%20FINAL%202010.pdf.

[107] For further details on resolution 1904 (2009), see section 2 (f) (v) of the present chapter, above.

[108] A/64/138 and Add.1.

General Assembly

On 2 December 2009, the General Assembly adopted, on the recommendation of the First Committee, two resolutions in the area of outer space.

In resolution 64/49, entitled "Transparency and confidence-building measures in outer space activities", the General Assembly invited, *inter alia*, all Member States to continue to submit to the Secretary-General concrete proposals on international outer space transparency and confidence building measures in the interest of maintaining international peace and security and promoting international cooperation and the prevention of an arms race in outer space.

In its resolution 64/28, entitled "Prevention of an arms race in outer space", the General Assembly reaffirmed, *inter alia*, the importance and urgency of the prevention of an arms race in outer space and emphasized the necessity of further measures with appropriate and effective provisions for verification to prevent an arms race in outer space. It further called upon all States to contribute actively to the objective of the peaceful use of outer space and of the prevention of an arms race in outer space in the interest of maintaining international peace and security and promoting international cooperation.

(iii) *Relationship between disarmament and development*

Pursuant to General Assembly resolution 63/52 of 2 December 2008, the Secretary-General submitted a report to the General Assembly at its sixty-fourth session on the relationship between disarmament and development.[109] The report summarized the activities in strengthening further the role of the United Nations in the disarmament-development relationship as well as the increased attention given by Member State to such relationship. It also presented the information received from Governments.

On 2 December 2009, the General Assembly adopted, on the recommendation of the First Committee, resolution 64/32, entitled "Relationship between disarmament and development", in which it stressed, *inter alia*, the central role of the United Nations in the relationship between disarmament and development, and further urged the international community to devote part of the resources made available by the implementation of disarmament and arms limitation agreements to economic and social development, with a view to reducing the ever-widening gap between developed and developing countries.

(iv) *Multilateralism and disarmament*

On 2 December 2009, the General Assembly adopted, on the recommendation of the First Committee, resolution 64/34 entitled "Promotion of multilateralism in the area of disarmament and non-proliferation". In the resolution, the Assembly reaffirmed, *inter alia*, multilateralism as the core principle in negotiations in the area of disarmament and non-proliferation, as well as in resolving disarmament and non-proliferation concerns. It further urged the participation of all interested States in multilateral negotiations on arms regulation, non-proliferation and disarmament in a non-discriminatory and transparent manner.

[109] A/64/153.

(v) *Gender and disarmament*

On 30 September 2009, the Security Council adopted resolution 1888 (2009), in which it reaffirmed, *inter alia*, 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, could significantly exacerbate situations of armed conflict and might impede the restoration of international peace and security. In this regard, the Council affirmed that effective steps to prevent and respond to such acts of sexual violence could significantly contribute to the maintenance of international peace and security. The Council demanded that all parties to armed conflict immediately take appropriate measures to protect civilians, including women and children from all forms of sexual violence. The Council also requested that the Secretary-General appoint a Special Representative to address sexual violence in armed conflict, and further decided to include specific provisions for the protection of women and children from rape and other sexual violence in the mandates of United Nations peacekeeping operations.

(vi) *Environmental norms and disarmament*

Pursuant to General Assembly resolution 63/51 of 2 December 2008, the Secretary-General submitted to the Assembly at its sixty-fourth session, a report 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.[110]

On 2 December 2009, the General Assembly, upon the recommendation of the First Committee, adopted resolution 64/33, 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, *inter alia*, that international disarmament forums should take fully into account the relevant environmental norms in negotiating treaties and agreements on disarmament and arms limitation. It further called upon States to adopt unilateral, bilateral, regional and multilateral measures so as to contribute to ensuring the application of scientific and technological progress within the framework of international security, disarmament and other related spheres, without detriment to the environment or to its effective contribution to attaining sustainable development.

4. Legal aspects of peaceful uses of outer space

(*a*) The Legal Subcommittee on the Peaceful Uses of Outer Space

The Legal Subcommittee on the Peaceful Uses of Outer Space held its forty-eighth session[111] at the United Nations Office at Vienna from 23 March to 3 April 2009. One new key item, general exchange of information on national mechanisms relating to space debris mitigation measures, was on the agenda.

[110] A/64/118.

[111] For the report of the Legal Subcommittee, see A/AC.105/935.

The Subcommittee welcomed the inclusion of the new agenda item. It noted that endorsement by the General Assembly[112] of the Space Debris Mitigation Guidelines of the Committee on the Peaceful Uses of Outer Space[113] was a key step in providing space-faring nations with guidance on how to mitigate the problem of space debris. Further, the Subcommittee noted that some States had strengthened their national mechanisms governing space debris mitigation by nominating governmental supervisory authorities; involving academia and industry; and developing new legislative norms, instructions, standards and frameworks.

The Subcommittee agreed that collision and other incidents that had occurred in space in recent years underlined the need for space-faring States to coordinate their activities in a transparent and responsible manner through the tracking, monitoring and dissemination of information on space debris. It urged States to continue to implement the Space Debris Mitigation Guidelines of the Committee on the Peaceful Uses of Outer Space and to study the experience of States that had already established national mechanisms governing space debris mitigation.

Under the agenda item "Status and application of the five United Nations treaties on outer space", the Subcommittee noted two additional accessions since 1 January 2009 and provided a revised status of the five United Nations treaties[114] on outer space. The Subcommittee noted that while the five treaties constituted the regime to be observed by States, the current legal framework required modification in order to keep pace with advances in space technology. Such modifications include outlining and adopting a set of measures and reviewing key provisions of international space law in a comprehensive, integrated and gradual manner. The view was expressed that successful implementation and application of the international legal framework governing space activities depends on understanding and acceptance on the part of policymakers and decision makers of the United Nations treaties and principles on outer space.

Regarding the agenda item entitled "Examination and review of the developments concerning the draft protocol on matter specific to space assets to the Convention on International Interests in Mobile Equipment",[115] the Subcommittee reviewed advancements made by the International Institute for the Unification of Private Law (UNIDROIT) concerning the draft space assets protocol. It noted that the steering committee of UNIDROIT had reached a consensus on certain issues and prepared an alternative version of the draft

[112] General Assembly resolution 62/217 of 22 December 2007.

[113] Report of the Committee on the Peaceful Use of Outer Space, *Official Records of the General Assembly, Sixty-second Session, Supplement No. 20* (A/62/20), paras. 117 and 118 and annex.

[114] Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies, adopted by General Assembly resolution 2222 (XXI) of 19 December 1966; Agreement on the Rescue of Astronauts, the Return of Astronauts and the Return of Objects Launched into Outer Space. adopted by General Assembly resolution 2345 (XXII) of 19 December 1967; Convention on International Liability for Damage Caused by Space Objects, adopted by General Assembly resolution 2777 (XXVI) of 29 November 1971; Convention on Registration of Objects Launched into Outer Space, adopted by General Assembly resolution 3235 (XXIX) of 12 November 1975; and Agreement Governing the Activities of States on the Moon and Other Celestial Bodies, adopted by General Assembly resolution 34/68 of 5 December 1979.

[115] United Nations, *Treaty Series*, vol. 2307, p. 285.

space assets protocol at its first meeting held in Berlin, Germany, from 7 to 9 May 2008.[116] The Subcommittee further noted that the alternative version of the draft protocol would be considered by the steering committee at its second meeting, with a view to reconvening the committee of governmental experts and adopting the draft space assets protocol in the third quarter of 2010.

With regard to matters related to the definition and delimitation of outer space and the character and utilization of the geostationary orbit, the Subcommittee reconvened its Working Group on the Definition and Delimitation of Outer Space. The Working Group provided a report on its meetings,[117] which was endorsed by the Subcommittee.[118] In its report, the Working Group agreed to continue to invite members of the Committee on the Peaceful Use of Outer Space to submit information on national legislation or any national practices that might exist or are being developed that relate directly or indirectly to the definition and/or delimitation of outer space. The working group also agreed to continue asking States whether they consider it necessary to define and/or delimit airspace and outer space, or if they would consider another approach to solving this issue.

(*b*) General Assembly

On 2 December 2009, the General Assembly adopted, on the recommendation of the First Committee, resolution 64/28 entitled "Prevention of an arms race in outer space". In this resolution, the Assembly, *inter alia*, reaffirmed its recognition that the legal regime applicable to outer space did not in and of itself guarantee the prevention of an arms race in outer space; that the regime played a significant role in the prevention of an arms race in that environment; that there is a need to consolidate and reinforce that regime and enhance its effectiveness; and that it is important to comply strictly with existing agreements, both bilateral and multilateral. The Assembly invited the Conference on Disarmament to establish a Working Group under its agenda item entitled "Prevention of an arms race in outer space" as early as possible during its 2010 session, and reiterated that the Conference on Disarmament has the primary role in the negotiation of bilateral or multilateral agreements on the prevention of an arms race in outer space. It also urged States conducting, or interested in conducting, activities in outer space to keep the Conference on Disarmament informed of the progress of bilateral and multilateral negotiations regarding these activities.

On the same day, the Assembly adopted, on the recommendation of the First Committee, resolution 64/49 entitled "Transparency and confidence-building measures in outer-space activities". In this resolution, the Assembly took note, *inter alia*, of the reports of the Secretary-General containing concrete proposals from Member States on international outer space transparency and confidence-building measures. It invited all Member States

[116] UNIDROIT, *Steering Committee to build consensus around the provisional conclusions reached by the Government/industry meeting regarding the preliminary draft Space Assets Protocol held in New York on 19 and 20 June 2007, Launch meeting 7/9 May 2008*.

[117] Report of the Committee on the Peaceful Use of Outer Space, *Official Records of the General Assembly, Sixty-second Session, Supplement No. 20* (A/62/20), annex II.

[118] Report of the Committee on the Peaceful Use of Outer Space, *Official Records of the General Assembly, Sixty-second Session, Supplement No. 20* (A/62/20), para. 84.

to submit such proposals to the Secretary-General in the interest of maintaining international peace and security and promoting international cooperation and the prevention of an arms race in outer space.

On 10 December 2009, the Assembly adopted, on the recommendation of the Fourth Committee, resolution 64/86 entitled "International cooperation in the peaceful uses of outer space". In this resolution, the Assembly urged States not already parties to the international treaties governing the use of outer space to consider ratifying or acceding to these treaties in accordance with their domestic law, as well as incorporating them into their national legislation. It also requested entities of the United Nations system and other international organizations to continue or 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.

5. Human rights[119]

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

(i) *Human Rights Council*

The Human Rights Council, established in 2006 to replace the Commission on Human Rights,[120] 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 universal periodic review.[121] The Council also assumed

---

[119] 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, the Committee on Economic, Social and Cultural Rights, the Committee on the Elimination of Racial Discrimination, Committee on the Elimination of Discrimination Against Women, the Committee Against Torture, Committee on the Rights of the Child, the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families, and the Committee on the Rights of Persons with Disabilities). Detailed information and documents relating to human rights are available on the website of the Office of the United Nations High Commissioner for Human Rights at http://www.ohchr.org. For a complete list of signatories and States parties to international instruments relating to human rights that are deposited with the Secretary-General, see chapter IV of *Multilateral Treaties Deposited with the Secretary-General*, available at http://treaties.un.org/Pages/ParticipationStatus.aspx.

[120] 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 5.

[121] The first session of review cycle 2008–2011 was held from 7 to 18 April 2008. For a list of countries included and calendar for the full cycle please refer to the homepage of the Human Rights Council, http://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRMain.aspx.

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.[122] 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.[123]

In 2009, the Human Rights Council held its tenth, eleventh and twelfth regular sessions[124] and four special sessions on "The grave violations of human rights in the Occupied Palestinian Territory including the recent aggression in the occupied Gaza Strip",[125] "The impact of the global economic and financial crises on the universal realization and effective enjoyment of human rights",[126] "The human rights situation in Sri Lanka",[127] and "The human rights situation in the Occupied Palestinian Territory and East Jerusalem—15 and 16 October 2009".[128]

(ii) *Human Rights Council Advisory Committee*

The Human Rights Council Advisory Committee was established pursuant to Human Rights Council resolution 5/1, adopted on 18 June 2007, 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 functions 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 in Geneva its second session from 24 to 30 January 2009[129] and its third session from 3 to 7 August 2009.[130]

---

[122] Human Rights Council decision 1/102 of 30 June 2006.

[123] More detailed information on the mandate, work and methods of the Human Rights Council is available online at http://www2.0hchr.org/english/bodies/hrcouncil.

[124] For the reports of the tenth, eleventh and twelfth sessions respectively, see A/HRC/10/29, A/HRC/11/37 and A/HRC/12/L.10.

[125] Ninth special session of the Human Rights Council held in Geneva on 9 January 2009. See Report of the ninth special session of the Council (A/HRC/S-9/2).

[126] Tenth special session held in Geneva on 20 and 23 February 2009. See the Report of the tenth special session of the Council (A/HRC/S-10/2).

[127] Eleventh special session of the Human Rights Council held in Geneva on 26 and 27 May 2009. See Report of the eleventh special session of the Council (A/HRC/S-11/2).

[128] Twelfth Special session of the Human Rights Council held on 15 and 16 November 2009. See Report of the Human Rights Council on its twelfth special session (A/64/53/Add.1) and (A/HRC/S-12/1).

[129] For the report of the second session of the Advisory Committee, see (A/HRC/AC/2/2).

[130] For the report of the third session of the Advisory Committee, see (A/HRC/AC/3/2).

(iii) *Human Rights Committee*

The Human Rights Committee was established under the International Covenant on Civil and Political Rights of 1966[131] to monitor the implementation of the Covenant and its Optional Protocols[132] in the territory of States parties. The Committee held its ninety-fifth session in New York from 16 March to 3 April 2009, and its ninety-sixth and ninety-seventh sessions in Geneva from 13 to 31 July and from 12 to 30 October respectively.[133]

(iv) *Committee on Economic, Social and Cultural Rights*

The Committee on Economic, Social and Cultural Rights was established by the Economic and Social Council[134] to monitor the implementation of the International Covenant on Economic, Social and Cultural Rights of 1966[135] by its State parties. The Committee held its forty-second and forty-third sessions in Geneva from 4 to 22 May and from 23 to 26 November 2009, respectively.[136]

(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[137] to monitor the implementation of this Convention by its States parties. The Committee held its seventy-fourth and seventy-fifth sessions in Geneva from 16 February to 6 March and from 3 to 28 August 2009, respectively.[138]

(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[139] to monitor the implementation of this Convention by its States parties.

---

[131] United Nations, *Treaty Series*, vol. 999, p. 171.

[132] Optional Protocol to the International Covenant on Civil and Political Rights, General Assembly resolution 2200A (XXI) of 16 December 1966, annex; and Second Optional Protocol to the International Covenant on Civil and Political Rights, General Assembly resolution 44/128 of 15 December 1989, annex.

[133] For the reports of the ninety-fifth and ninety-sixth sessions, see *Official Records of the General Assembly, Sixty-fourth session, Supplement No. 40*, (A/64/40 (Vol. I)). For the report of the ninety-seventh session, see *Official Records of the General Assembly, Sixty-fifth session, Supplement No. 40*, (A/65/40) (forthcoming).

[134] Economic and Social Council resolution 1985/17 of 28 May 1985.

[135] United Nations, *Treaty Series*, vol. 993, p. 3.

[136] The reports of the sessions can be found in *Official Records of the Economic and Social Council, 2010, Supplement No. 2,* (E/2010/22-E/C.12/2009/3).

[137] United Nations, *Treaty Series*, vol. 660, p. 195.

[138] The respective reports can be found in *Official Records of the General Assembly, Sixty-fourth Session, Supplement No. 18* (A/64/18).

[139] United Nations, *Treaty Series*, vol. 1249, p. 13.

The Committee held its forty-third session in Geneva from 19 January to 6 February 2009 and its forty-fourth session in New York from 20 July to 7 August 2009.[140]

(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[141] to monitor the implementation of the Convention by its States parties. In 2009, the Committee held its forty-second and forty-third sessions from 27 April to 15 May and from 2 to 20 November, respectively, in Geneva.[142] 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,[143] held its seventh, eighth and ninth sessions from 9 to 13 February, from 22 to 26 June and from 16 to 20 November 2009 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[144] to monitor the implementation of this Convention by its States parties. The Committee held its fiftieth, fifty-first and fifty-second sessions in Geneva, from 12 to 30 January, from 25 May to 12 June, and from 14 September to 2 October 2009, respectively.[145]

(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[146] to monitor the implementation of this Convention by its States parties in their territories. In 2009, the

---

[140] The reports of the forty-second and forty-third sessions can be found in *Official Records of the General Assembly, Sixty-fourth Session, Supplement No. 38* (A/64/38). The report of the forty-fourth session can be found in *Official Records of the General Assembly, Sixth-fifth Session, Supplement No. 38* (A/65/38) (forthcoming).

[141] United Nations, *Treaty Series*, vol. 1465, p. 85.

[142] The report of the forty-second session can be found in *Official Records of the General Assembly, Sixty-fourth Session, Supplement No. 44* (A/64/44). The report of the forty-third session can be found in in *Official Records of the General Assembly, Sixty-fifth Session, Supplement No . 44* (A/65/44) (forthcoming).

[143] The Optional Protocol was adopted in General Assembly resolution 57/199 on 18 December 2002. For further information on the mandate of the Subcommittee, see *United Nations Juridical Yearbook 2006*, United Nations Publication, Sales No. E.08.V.1 (ISBN 978–91–1-133664–1), chapter III, section 6.

[144] United Nations, *Treaty Series*, vol. 1577, p. 3.

[145] The report of the fiftieth, fifty-first and fifty-second sessions can be found in *Official Records of the General Assembly, Sixty-fourth Session, Supplement No. 41* (A/64/41) (forthcoming).

[146] General Assembly resolution 45/158 of 18 December 1990.

Committee held its tenth and eleventh sessions in Geneva from 20 April to 1 May and from 12 to 16 October 2009, respectively.[147]

(x) *Committee on the Rights of Persons with Disabilities*

The Committee on the Rights of Persons with Disabilities is the body of independent experts established under the Convention on the Rights of Persons with Disabilities[148] and its Optional Protocol[149] to monitor the implementation of this Convention and Optional Protocol by States Parties. The Committee meets in Geneva and holds two regular sessions per year.

Under the Convention, all State parties are obliged to submit regular reports to the Committee on how they implement the rights contained in it, initially within two years of accepting the Convention, and thereafter every four years. The Committee examines each report, and makes such suggestions and general recommendations to the State party on the report as it considers appropriate.

Furthermore, under the Optional Protocol[150] to the Convention, the Committee has competence to examine individual complaints relating to alleged violations of the Convention by States that are parties to the Protocol.

The Committee held its first session from 23 to 27 February 2009, and its second from 19 to 23 October 2009.[151]

(*b*) Racism, Racial Discrimination, Xenophobia and All Forms of Discrimination

(i) Human Rights Council

On 27 March 2009, the Human Rights Council adopted resolution 10/30, entitled "Elaboration of complementary standards to the Convention on the Elimination of All Forms of Racial Discrimination", in which it welcomed, *inter alia*, the progress achieved in the first session of the Ad Hoc Committee of the Human Rights Council on the Elabora-

[147] The report of the tenth session can be found in *Official Records of the General Assembly, Supplement No. 48* (A/64/48). The report of the eleventh session can be found in *Official Records of the General Assembly, Sixty-fifth Session, Supplement No. 48* (A/65/48) (forthcoming).

[148] General Assembly Resolution 61/106 of 13 December 2006. Adopted on 13 December 2006 at the United Nations Headquarters in New York, and opened for signature on 30 March 2007, entered into force on 3 May 2008, in accordance with article 45(1).

[149] General Assembly Resolution 61/106 of 13 December 2006. Adopted on 13 December 2006 at the United Nations Headquarters in New York, and opened for signature on 30 March 2007, entered into force on 3 May 2008, in accordance with article 13(1).

[150] General Assembly Resolution 61/106 of 13 December 2006. Adopted on 13 December 2006 at the United Nations Headquarters in New York, and opened for signature on 30 March 2007, entered into force on 3 May 2008, in accordance with article 13(1).

[151] The report of the first session can be found in (CRPD/C/1/2). The report of the second session can be found in (CRPD/C/2/2).

tion of Complementary Standards.[152] It noted the Committee's mandate to develop complementary standards in the form of either a convention or an additional protocol to the International Convention on the Elimination of All Forms of Racial Discrimination.[153] In addition, it endorsed a road map adopted by the Ad Hoc Committee in its first session as a guiding framework document for all work in this regard.

Also on 27 March 2009, the Human Rights Council adopted resolution 10/25, entitled "Discrimination based on religion or belief and its impact on the enjoyment of economic, social and cultural rights, in which it stressed that the right to freedom of thought, conscience and religion applies equally to all people, regardless of their religions or beliefs and without discrimination as to their equal protection by the law. It urged States, *inter alia*, to ensure that individuals have available to them appropriate legal and other remedies, allowing them to seek redress against discrimination based on religion or belief that affects their enjoyment of economic, social or cultural rights, subject to international human rights law. It also encouraged the promotion and implementation of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief[154] by all actors in society.

(ii) *General Assembly*

On 18 December 2009, the General Assembly adopted, on the recommendation of the Third Committee, resolution 64/164 entitled "Elimination of all forms of intolerance and of discrimination based on religion or belief". In this resolution, the Assembly stressed, *inter alia*, that the right to freedom of thought, conscience and religion applies equally to all persons, regardless of their religion or beliefs, and without any discrimination as to their equal protection by the law. It emphasized that, as underlined by the Human Rights Committee, restrictions on the freedom to manifest one's religion or belief are permitted only if prescribed by law, if necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others, if non-discriminatory, and if applied in a manner that does not vitiate the right to freedom of thought, conscience and religion. It further emphasized that legal procedures relating to religious or belief-based groups and places of worship are not required for the right to manifest one's religion or belief to exist, and that any such procedures should be non-discriminatory. It urged States to ensure that their constitutional and legislative systems provide adequate and effective guarantees or freedom of thought, conscience, religion and belief without distinction. It further urged States to ensure that the freedom of all persons and members of groups to establish and maintain charitable, religious or humanitarian institutions is fully respected and protected, in accordance with appropriate national legislation and international human rights law.

On the same day, the General Assembly adopted, on the recommendation of the Third Committee, resolution 64/148 entitled "Global efforts for the total elimination of racism, racial discrimination, xenophobia and related intolerance and the comprehensive implementation of and follow-up to the Durban Declaration and Programme of Action". In this

[152] Report of the Ad Hoc Committee on the elaboration of complementary standards on its first session, 24 February 2009 (A/HRC/10/88).

[153] United Nations, *Treaty Series*, vol. 660, p. 195.

[154] General Assembly resolution 36/55 of 25 November 1981.

resolution, the Assembly, *inter alia*, called upon States to formulate without delay policies and plans of action to combat racism, racial discrimination, xenophobia and related intolerance at the national, regional and international levels. It acknowledged that no derogation from the prohibition on racial discrimination, genocide, the crime of apartheid or slavery is permitted under relevant human rights instruments, and urged States to review and revise their national immigration laws, policies and practices so that they are free from racial discrimination and compatible with their obligations under international human rights law. It further emphasized that it is the responsibility of States to adopt effective measures to combat criminal acts motivated by racism, racial discrimination, xenophobia and related intolerance, and to ensure that the rule of law is applied. It called upon States which had not yet done so to accede to the Convention on the Elimination of All Forms of Racial Discrimination of 1966,[155] and encouraged Member States and other relevant stakeholders to consider implementing recommendations of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, contained in his reports.[156]

Also on 18 December 2008, the General Assembly adopted, on the recommendation of the Third Committee, resolution 64/147 entitled "Inadmissibility of certain practices that contribute to fuelling contemporary forms of racism, racial discrimination, xenophobia and related intolerance". In this resolution, the Assembly noted with concern an increase in racist and xenophobic violence in certain countries targeting members of minority ethnic, religious or cultural communities and national minorities. The General Assembly reaffirmed that such acts of violence may fall under the class of activity described in article 4 of the Convention on the Elimination of All Forms of Racial Discrimination of 1966,[157] and an abuse of the right to freedom of opinion and expression under that Convention, as well as the Universal Declaration of Human Rights of 1948[158] and the International Covenant on Civil and Political Rights of 1966.[159] It stressed that failure by Member States to address such practices is incompatible with their obligations under the Charter of the United Nations, and emphasized the need for States to take more effective measures, in accordance with international human rights law, to combat contemporary forms of racism, racial discrimination, xenophobia and related intolerance. It also reaffirmed the importance of human rights education as a complement to legislative measures undertaken by States, and recalled the obligation for States under the International Convention on the Elimination of All Forms of Racial Discrimination,[160] *inter alia*, to declare illegal organizations and propaganda activities that promote and incite racial discrimination.

---

[155] United Nations, *Treaty Series*, vol. 660, p. 195.

[156] See, for example, the Special Rapporteur's most recent report entitled "Contemporary forms of racism, racial discrimination, xenophobia and related intolerance", 17 August 2009 (A/64/295).

[157] United Nations, *Treaty Series*, vol. 660, p. 195.

[158] General Assembly resolution 217 A (III) of 10 December 1948.

[159] United Nations, *Treaty Series*, vol. 999, p. 171.

[160] United Nations, *Treaty Series*, vol. 660, p. 195.

(*c*) Right to development and poverty reduction

(i) *Human Rights Council*

On 2 October 2009, the Human Rights Council adopted resolution 12/23 entitled "The right to development". In this resolution, the Council decided to continue to ensure that its agenda promotes and advances sustainable development and the achievement of the Millennium Development Goals;[161] and to ensure that the right to development is raised to the level of all other human rights and fundamental freedoms. It also decided that the Working Group on the Right to Development would establish a set of standards for the implementation of the right to development, with a view to potentially developing these standards into an international legal standard of a binding nature.

(ii) *General Assembly*

On 18 December 2009, the General Assembly adopted, on the recommendation of the Third Committee, resolution 64/172 entitled "The right to development". In this resolution, the Assembly stressed, *inter alia*, that the primary responsibility for the promotion and protection of human rights lies with States. It recognized that good governance and the rule of law at the national level assist all States in promoting and protecting human rights, and called upon States to institute measures to implement the right to development as an integral part of fundamental human rights. In particular, it acknowledged the need to integrate the important role of women, children and indigenous people in the process of realizing the right to development, and emphasized the need to criminalize all forms of corruption at all levels. With regard to the activities of the United Nations, it called upon United Nations funds, programmes and specialized agencies to mainstream the right to development in their operational programmes and activities, and requested that the Secretary-General submit a report, at the Assembly's sixty-fifth session, on the implementation of this resolution.

On the same day, the General Assembly adopted, on the recommendation of the Third Committee, resolution 64/135 entitled "Implementation of the outcome of the World Summit for Social Development and of the twenty-fourth special session of the General Assembly". In this resolution, the Assembly emphasized, *inter alia*, that the major United Nations conferences and summits had reinforced the priority of poverty eradication within the United Nations development agenda. It recognized the need to promote broad respect for human rights and fundamental freedoms in order to address the needs of people living in poverty, including the strengthening and consolidation of democratic institutions and governance. It acknowledged the important nexus between international migration and social development, and stressed the importance of enforcing labour laws effectively with regard to migrant workers' labour relations and working conditions. It also acknowledged the importance of recognizing the rights of indigenous people, and of anticipating and offsetting the negative social and economic consequences of globalization for people living in rural areas. In addition, it recognized that both the public and private sectors have a role to play in promoting social development: the public sector in developing an environment

[161] General Assembly resolution 55/2 of 8 September 2000.

that allows for full employment and decent work for all; and the private sector in generating new investments, employment and financing for development.

On 21 December 2009, the General Assembly adopted, on the recommendation of the Second Committee, resolution 64/216 entitled "Second United Nations Decade for the Eradication of Poverty". In this resolution, the Assembly reaffirmed, *inter alia*, that the objective of the Second United Nations Decade for the Eradication of Poverty is to support the implementation of internationally agreed development goals. While reaffirming that each country is primarily responsible for its own development, and that there should be respect for national ownership, strategies and sovereignty, it recognized that States' efforts should be complemented by supportive international programmes. To this end, it acknowledged a current action plan for poverty eradication involving more than twenty-one agencies, funds, programmes and regional commissions, and recalled its decision to convene a General Assembly high-level political meeting on the theme of poverty eradication.

On the same day, the General Assembly adopted, on the recommendation of the Second Committee, resolution 64/215 entitled "Legal empowerment of the poor and eradication of poverty". In this resolution, the Assembly emphasized, *inter alia*, the importance of equal access to justice for all, the improvement of administration of justice and identity and birth registration systems, and awareness-raising concerning existing legal rights. It recognized that respect for the rule of law and property rights, as well as appropriate policy and regulatory frameworks, encourage business formation and entrepreneurship, which in turn contribute to poverty eradication. It emphasized the importance of protecting labour rights, including fundamental principles laid down by the International Labour Organization, and encouraged countries to continue their efforts in the legal empowerment of the poor, emphasizing in particular the need to improve and expand literacy.

(*d*) Right of people to self-determination

(i) *Universal realization of the right of peoples to self-determination*

a. General Assembly

On 18 December 2009, the General Assembly adopted, on the recommendation of the Third Committee, resolution 64/149 entitled "Universal realization of the right of peoples to self-determination". In this resolution, the Assembly reaffirmed that the universal realization of the right of all peoples, including those under colonial, foreign or alien domination, to self-determination is a fundamental condition for the effective guarantee and observance of human rights. It also declared its firm opposition to acts of foreign military intervention, aggression and occupation, since these have resulted in the suppression of the right of peoples to self-determination and other human rights in certain parts of the world. It called upon States to cease military intervention and occupation of foreign countries, as well as 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 26 March 2009, the Human Rights Council adopted resolution 10/11 entitled "The use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination". In this resolution, the Council reaffirmed that the use of mercenaries and their recruitment, financing and training are causes for grave concern for all States and violate the purposes and principles enshrined in the Charter of the United Nations. It urged all States to take necessary steps and to exercise the utmost vigilance against the activities of mercenaries, including legislative measures to ensure that their territories under their control are not used for the recruitment, assembly, financing, transit and training of mercenaries. It also called upon States which had not yet done so to consider taking action to become parties to the International Convention against the Recruitment, Use, Financing and Training of Mercenaries,[162] and called upon the international community to cooperate with and assist the judicial prosecution of accused mercenary activities in transparent, open and fair trials, in accordance with international law. It also called upon 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 to consult with intergovernmental and non-governmental organizations on the content and scope of a possible draft convention, accompanying model law and other legal instruments on private companies offering military assistance, consultancy and other military security-related services on the international market.

b. General Assembly

On 18 December 2009, the General Assembly adopted, on the recommendation of the Third Committee, resolution 64/151 entitled "Use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination". In this resolution, the Assembly reaffirmed, *inter alia*, that the use of mercenaries and their recruitment, financing and training are causes for grave concern to all States and violate the purposes and principles enshrined in the Charter of the United Nations. It called upon States which had not yet done so to consider taking necessary action to accede to or ratify the International Convention against the Use, Financing and Training of Mercenaries, and to investigate and bring to trial criminal acts of a terrorist nature in accordance with domestic law and bilateral or international treaties. It further called upon Member States to cooperate with and assist the judicial prosecution of accused mercenary activities in transparent, open and fair trials, in accordance with their obligations under international law, and urged States to cooperate with 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.

[162] United Nations, *Treaty Series*, vol. 2163, p. 75.

(*e*) Economic, social and cultural rights

(i) *Right to food*

a. Human Rights Council

On 26 March 2009, the Human Rights Council adopted resolution 10/12, entitled "The right to food". In this resolution, the Council reaffirmed, *inter alia*, the right of every person to have adequate food and be free from hunger, and acknowledged that the goal of halving the number of people who are undernourished by 2015 is consistent with Millennium Development Goal 1,[163] as well as the Rome Declaration on World Food Security.[164] It reiterated that food should not be used as an instrument of political or economic pressure, and that it is necessary for States to refrain from unilateral measures that endanger food security and that are not in accordance with international law. Further, it encouraged States to ensure that women and girls have equal access to resources, including land, food and water, in accordance with their obligations under the Convention on the Elimination of All Forms of Discrimination against Women,[165] and to fulfil their obligations relating to the right to adequate food in the International Covenant on Civil and Political Rights.[166]

b. General Assembly

On 18 December 2009, the General Assembly adopted, on the recommendation of the Third Committee, resolution 64/159 entitled "The right to food". In this resolution, the Assembly resolved to act to ensure that the human rights perspective is taken into account at the national, regional and international levels in measures to address the global food crisis. It encouraged States to take steps towards the full realization of the right to food, reaffirming the right of every person to have adequate food and be free from hunger, and encouraging States to ensure that women and girls have equal access to resources, including land, food and water, in accordance with their obligations under the Convention on the Elimination of All Forms of Discrimination against Women. It also urged States to give priority in their development strategies and expenditure to the realization of the right to food, and to fulfil their obligations relating to the right to adequate food in the International Covenant on Civil and Political Rights.

(ii) *Right to education*

a. Human Rights Council

In 2009, Mr Vernoz Muñoz, the Special Rapporteur on the right to education, focused in his annual report to the Human Rights Council[167] on the right to education of persons in detention. In his report, the Special Rapporteur acknowledged that although many prison

[163] United Nations Millennium Declaration, General Assembly resolution 55/2 of 8 September 2000.

[164] Report of the World Food Summit, 13–17 November 1996 (WFS 96/REP), appendix.

[165] United Nations, *Treaty Series*, vol. 1249, p.13.

[166] United Nations, *Treaty Series*, vol. 999, p. 171.

[167] Report of the Special Rapporteur on the right to education of persons in detention, 2 April 2009 (A/HRC/11/8).

systems are in crisis, overcrowded and inadequately resourced, human rights are not relinquished upon imprisonment, and that the right to education is inviolable. He noted that the international community has a long-standing concern to humanize criminal justice, and that international standards had been developed that aim to confront the stigma, indifference and marginalization that often characterizes education in detention. In the Special Rapporteur's opinion, education should be aimed at the full development of the whole person, and therefore requires prisoner access to a range of education resources, including both formal and informal education, literacy programmes, vocational training, creative, religious and cultural activities, physical education and sport, social education, higher education and the provision of library facilities. The Special Rapporteur recommended, *inter alia*, that States entrench the right to education for persons in detention in their Constitutions or related legislation; that education for persons in detention be resourced from public funds; and that particular attention should be given to the education needs of traditionally marginalized groups, including women, children and people with physical, learning and psychosocial disabilities.

On 17 June 2009, the Human Rights Council adopted resolution 11/6 entitled "The right to education: follow-up to Human Rights Council resolution 8/4". In this resolution, the Council called upon States to take all measures to implement resolution 8/4, adopted on 18 June 2008, and to ensure the right to education, an imperative in its own right, of persons in detention in the criminal justice system. It further urged States to provide education that fosters reintegration into society and reduces recidivism by, *inter alia*, ensuring equal access to education for male and female detainees; removing barriers to education in detention, including its possible negative impact on opportunities for remuneration in detention; developing comprehensive education programmes aimed at the development of each detainee's full potential; and ensuring primary education is compulsory, accessible and available free to all.

(iii) *Right to adequate standard of living, including adequate housing and to be free of adverse effects of toxic waste*

Human Rights Council

The Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context presented her report to the Human Rights Council on 9 March 2009.[168] In her report, the Special Rapporteur noted the increasing perception of housing as a mere commodity or financial asset, rather than a human right to be enjoyed by all. She noted that the present financial crisis provided an opportunity to consider the adoption of a human rights-based approach to housing, and that the provision of housing for all cannot be achieved by markets alone, but would likely require public intervention. The Special Rapporteur recommended that the right to adequate housing should be fully integrated into all policies, projects and activities concerning housing, and that decision-making with respect to housing should

[168] Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and the right to non-discrimination in this context, 4 February 2009, (A/HRC/10/7).

be coherent, both at the national and international levels, and for all relevant public agencies and actors.

(iv) *Access to safe drinking water and sanitation*

a. Human Rights Council

On 1 October 2009, the Human Rights Council adopted resolution 12/8 entitled "Human rights and access to safe drinking water and sanitation". In this resolution, the Council recognized that States have an obligation to address and eliminate discrimination with regard to access to sanitation. It called upon States to create an enabling environment to address the issue of lack of sanitation at all levels including, where appropriate, by budgeting, legislation and the establishment of regulatory, monitoring and accountability frameworks and mechanisms; the assignment of clear institutional responsibilities; and the appropriate inclusion of sanitation in national poverty reduction strategies and development plans. It also called upon States to adopt a gender-sensitive approach to all relevant policy-making, and stressed the importance of international cooperation and technical assistance by specialized agencies of the United Nations system.

b. General Assembly

On 21 December 2009, the General Assembly adopted resolution 64/198, on the recommendation of the Second Committee, entitled "Midterm comprehensive review of the International Decade for Action, 'Water for Life', 2005–2015". In this resolution, the Assembly reaffirmed, *inter alia*, the internationally agreed development goals on water and sanitation, including those set out in the United Nations Millennium Declaration,[169] and welcomed activities undertaken by Member States relating to the implementation of the International Decade for Action "Water for Life", 2005–2015. It invited the President of the General Assembly to convene a high-level interactive dialogue of the sixty-fourth session of the General Assembly on the implementation of the Decade, and invited the Secretary-General, in cooperation with UN-Water, to take appropriate action to support Member States in the second half of the decade.

(v) *Right to health*

a. Human Rights Council

The Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Mr Anand Grover, submitted his report to the Human Rights Council on 31 March 2009.[170] In this report, the Special Rapporteur noted that the right to health is an inclusive right, covering not only the provision of timely and appropriate healthcare, but also access to clean water and sanitation, adequate housing and nutrition, as well as social determinants such as gender, racial and ethnic discrimination and disparities. The Special Rapporteur emphasized that if the right to health is integrated

[169] General Assembly resolution 55/2 of 8 September 2000.

[170] Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, 31 March 2009 (A/HRC/11/12).

into national and international health policymaking, it can help to establish laws, policies and practices that are sustainable, equitable, meaningful and responsive to the needs of people living in poverty. In addition, the Special Rapporteur expressed the view that States have an obligation to ensure that their laws and practices, including those related to intellectual property attached to medicines, take into account the right to health and the need to ensure access to affordable medicines for all. Further, the Special Rapporteur noted the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS),[171] and recommended that developing and least developed countries review their laws and policies to ensure they have made full use of flexibilities afforded to them under the TRIPS. The Special Rapporteur also recommended that these countries incorporate into their national patent laws all possible grounds upon which compulsory licences may be issued.

b. General Assembly

The Special Rapporteur also submitted a report to the General Assembly.[172] In this report, the Special Rapporteur focused on the issue of informed consent in the provision of healthcare and medical decision-making. The Special Rapporteur noted that informed consent invokes several elements of human rights law, namely the right to self-determination, freedom from discrimination, freedom from non-consensual experimentation, security and dignity of the human person, recognition before the law, freedom of thought and expression and reproductive self-determination. The Special Rapporteur recommended that States consider whether they are meeting their obligations to safeguard informed consent as a critical element of the right to health through their legal framework and judicial and administrative mechanisms, including policies and practices to protect against abuses.

On 10 December 2009, the General Assembly adopted resolution 64/108 entitled "Global Health and Foreign Policy". In this resolution, the Assembly noted the report and recommendations of the Secretary-General[173] and recognized the close relationship between foreign policy and global health and their interdependence. It stressed the importance of achieving the health-related Millennium Development Goals,[174] and emphasized the need for further international cooperation to meet emerging, new and unforeseen threats and epidemics. It further acknowledged that the current global influenza vaccine production capacity remains insufficient to meet anticipated need in pandemic situations, and noted with serious concern the lack of health care workers throughout the world, particularly in developing countries. To this end, it urged Member States to consider health issues in the formulation of foreign policy and to affirm their commitment to training health care workers in accredited institutions.

---

[171] Agreement on Trade-Related Aspects of Intellectual Property Rights, 15 April 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, United Nations, *Treaty Series*, vol. 1869, p. 299.

[172] Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health (A/64/272).

[173] Report of the Secretary-General on global health and foreign policy: strategic opportunities and challenges, 23 September 2009 (A/64/365).

[174] General Assembly resolution 55/2 of 8 September 2000.

(*f*) Civil and political rights

(i) *Torture*

a. Human Rights Council

The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Mr. Manfred Nowak, submitted his report to the Human Rights Council.[175] In this report, the Special Rapporteur acknowledged an increasing trend among States towards the abolition of capital punishment, reflected in recent protocols to existing treaties in Europe and the Americas.[176] Nevertheless, the Special Rapporteur noted that there is no explicit prohibition of the death penalty in the text of either the International Covenant on Civil and Political Rights[177] or the European[178] or American[179] Conventions on Human Rights, and that for States which have not ratified the optional Protocols to these Conventions, the use of the death penalty does not constitute an violation of the right to life. In light of this, the Special Rapporteur was of the view that the question of abolishing capital punishment at international law should be considered in the context of States' present-day understanding of "cruel, inhuman or degrading treatment". The Special Rapporteur suggested that the Human Rights Council may wish to follow the call of the General Assembly[180] to request a more comprehensive legal study on the compatibility of the death penalty with the right not to be subject to cruel, inhuman or degrading treatment under international human rights law.

The Special Rapporteur also considered the application of a human rights-based approach to drug policy, particularly with regard to drug users and the right to personal integrity and human dignity. The Special Rapporteur concluded that drug dependence should be treated like any other health-care condition, and that denial of medical treatment in custodial situations, or *de facto* denial of access to pain relief, may constitute cruel, inhuman or degrading treatment. He recommended, *inter alia*, that States refrain from using capital punishment in relation to drug-related offences and avoid discriminatory treatment of drug offenders, such as solitary confinement.

b. General Assembly

On 18 December 2009, the General Assembly adopted resolution 64/153 entitled "Torture and other cruel, inhuman or degrading treatment or punishment". In this resolution, the Assembly emphasized that all acts of torture must be made criminal under States' domestic criminal law, and encouraged States to also prohibit acts constituting cruel, inhuman or degrading treatment or punishment. It further condemned any action

---

[175] Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, 14 January 2009 (A/HRC/10/44).

[176] For example, the sixth and thirteenth Additional Protocols to the European Convention on Human Rights and the Protocol to the American Convention on Human Rights to Abolish the Death Penalty.

[177] United Nations, *Treaty Series*, vol. 999, p. 171.

[178] The European Convention on Human Rights, 4 November 1950.

[179] American Convention on Human Rights, 22 November 1969.

[180] General Assembly resolution 62/149 of 18 December 2007.

or attempt by States or public officials to legalize, authorize or acquiesce in torture or other cruel, inhuman or degrading treatment or punishment under any circumstances, including on grounds of national security or through judicial decisions. In addition, it stressed that national systems must ensure that victims of torture or other cruel, inhuman or degrading treatment or punishment obtain redress, are awarded fair and adequate compensation and receive appropriate social and medical rehabilitation. It called upon States to take appropriate legislative, administrative, judicial and other measures to prevent the production, trade, export and use of equipment specifically designed to inflict torture or other cruel, inhuman or degrading treatment or punishment, and urged States to comply strictly with their obligations under the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.[181] It also urged States not to expel, return ("refouler"), extradite or in any other way transfer a person to another State where there are substantial grounds for believing that the person would be in danger of being subjected to torture, and recognized that diplomatic assurances, where used, do not release States from their obligations under international human rights, humanitarian and refugee law, in particular the principle of *non-refoulement*.

(ii) *Arbitrary detention and extrajudicial, summary and arbitrary execution*

a. Human Rights Council

The Special Rapporteur on extrajudicial, summary or arbitrary executions, Mr. Philip Alston, submitted his annual report to the Human Rights Council in 2009.[182] In the report, the Special Rapporteur considered the incidence around the world of vigilante killings, which he defined as unlawful killings of suspected criminals by private citizens, carried out in violation of the law and with the purported aim of crime control. Although vigilante killings are undertaken by private citizens, the Special Rapporteur acknowledged that in many cases they can be attributable to States, in circumstances where States fail to effectively prevent the killings and prosecute perpetrators, or where they give implied approval or tacit support for killings. In this regard, the Special Rapporteur noted that where senior officials of a State do not publicly denounce instances of vigilante killing, there is a reasonable presumption that they have failed to take appropriate measures required of them under international human rights law. The Special Rapporteur particularly focused on the obligation of States to guarantee respect for the right to life within their territory and in areas under their control, and noted that this could be achieved through the adoption of legislative, judicial, administrative, educative and other measures.

On 25 March 2009, the Human Rights Council adopted resolution 10/2, entitled "Human rights in the administration of justice, in particular juvenile justice". In this resolution, the Council, *inter alia*, called upon Member States to spare no effort in providing effective legislative, judicial, social, educative and other relevant mechanisms and procedures to fully implement United Nations standards in the administration of justice. It invited Governments to provide training on human rights to professionals working in the field of administration of justice, including judges, lawyers, prosecutors, social work-

[181] United Nations, *Treaty Series*, vol. 1465, p. 85.

[182] Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, 20 May 2010 (A/HRC/14/24).

ers, and immigration and police officers. It recognized that all children and juveniles in conflict with the law of a particular state must be treated in a manner consistent with their rights, dignity and needs, and in accordance with international law. Further, it urged States to ensure that capital punishment and life imprisonment without the possibility of release are not imposed for people under the age of 18, neither in their legislation nor their practice.

On 26 March 2009, the Human Rights Council adopted resolution 10/9 entitled "Arbitrary detention". In this resolution, the Council, *inter alia*, encouraged States to take appropriate measures to ensure that their legislation, regulations and practices remain in conformity with the relevant international standards and applicable international legal instruments concerning detention. It also encouraged States to respect and promote the right of any person who has been arrested or criminally charged to be entitled to a trial within a reasonable period, and if a court determines that the person's detention has been unlawful, the right of that person to be released from detention. Further, the Council encouraged all States to ensure that immigrants in an irregular situation and asylum-seekers are protected from arbitrary arrest or detention.

(iii) *Enforced disappearances*

a. Human Rights Council

On 26 March 2009, the Human Rights Council adopted resolution 10/10 entitled "Enforced or involuntary disappearances". In this resolution, the Council, *inter alia*, urged States to promote and give effect to the Declaration on the Protection of All Persons from Enforced Disappearance,[183] and to ensure that authorities charged with investigation and prosecution have sufficient resources to resolve cases and bring perpetrators to justice. It further urged States to make provision in their legal system to ensure victims of enforced disappearance are able to seek fair, prompt and adequate reparation. It invited States to take legislative, administrative, legal and other steps to take action at the national and regional levels, and in cooperation with the United Nations. It encouraged States that have not yet signed, ratified or acceded to the International Convention for the Protection of All Persons from Enforced Disappearance[184] to consider doing so.

b. General Assembly

On 18 December 2009, the General Assembly adopted, on the recommendation of the Third Committee, resolution 64/167 entitled "International Convention for the Protection of All Persons from Enforced Disappearance". In this resolution, the Assembly, *inter alia*, welcomed the adoption of the International Convention for the Protection of All Persons from Enforced Disappearance. It acknowledged the work of the International Committee of the Red Cross in promoting compliance with international humanitarian law and acknowledged that acts of enforced disappearance are recognized by the Convention as crimes against humanity, in certain circumstances. Further, it noted the fact that eighty-one States had signed the Convention and sixteen had ratified or acceded to it, but called

[183] General Assembly resolution 47/133 of 18 December 1992.

[184] General Assembly resolution 61/177 of 20 December 2006.

upon States that had not done so to consider signing, ratifying or acceding to it. It also requested United Nations agencies, intergovernmental and non-governmental organizations and the Working Group on Enforced or Involuntary Disappearances to disseminate information on the Convention and promote understanding of it.

(iv) *Integration of human rights of women and a gender perspective*[185]

a. Human Rights Council

On 17 June 2009, the Human Rights Council adopted resolution 11/2 entitled "Accelerating efforts to eliminate all forms of violence against women". In this resolution, the Council, *inter alia*, strongly condemned all acts of violence against women and girls, whether perpetrated by the State, private persons or non-state actors. It stressed that all forms of violence against women and girls must be treated as criminal offences punishable by law, and called upon States to ensure that their legislation includes measures to enhance protection of victims and prosecute, punish and redress wrongs done to women and girls, in accordance with international human rights instruments and international humanitarian law. Further, it encouraged States to implement Security Council resolutions 1325 (2000) of 31 October 2000 and 1820 (2008) of 19 June 2008 in their efforts to eliminate all forms of violence against women and girls. It stressed that challenges and obstacles remain in the implementation of international standards and norms to address the inequality between men and women, and violence against women in particular, and pledged to intensify action to ensure their full and accelerated implementation.

b. General Assembly

On 21 December 2009, the General Assembly adopted, on the recommendation of the Second Committee, resolution 64/217 entitled "Women in development". In this resolution, the Assembly, *inter alia*, urged Member States, non-governmental organizations and the United Nations system to accelerate further efforts to empower women to participate actively and effectively in the development, implementation and evaluation of national development and/or poverty eradication policies, strategies and programmes. It encouraged Governments, the private sector, non-governmental organizations and other actors of civil society to promote and protect the rights of women workers; to take action to remove structural and legal barriers as well as stereotypical attitudes towards gender equality at work; and to initiate positive steps to promote equal pay for equal work or work of equal value. Further, it urged Member States to adopt and review legislation and policies to ensure women's equal access to and control over land, housing and property; to provide training designed to make the legislative, judicial and administrative system more responsive to gender equality issues; and to provide legal aid to women seeking to claim their rights.

On 18 December 2009, the General Assembly adopted, on the recommendation of the Third Committee, resolution 64/141 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 session of the General Assembly". In this resolution, the

[185] For more information on the rights of women, see section 6 of this chapter.

Assembly, *inter alia,* reaffirmed the Beijing Declaration and Platform for Action adopted at the Fourth World Conference on Women,[186] the outcome of the twenty-third special session of the General Assembly,[187] and the declaration adopted by the Commission on the Status of Women on the occasion of the ten-year review and appraisal of the implementation of Beijing Declaration and Platform for Action.[188] It also called upon State parties, *inter alia*, to comply fully with their obligations under the Convention on the Elimination of All Forms of Discrimination Against Women[189] and its Optional Protocol;[190] to elaborate and implement laws and strategies to eliminate violence against women and girls; and to intensify action to achieve the full and effective implementation of the Beijing Declaration and Platform for Action, and the outcome of the twenty-third special session of the General Assembly.

On the same day, the General Assembly adopted, on the recommendation of the Third Committee, resolution 64/137 entitled "Intensification of efforts to eliminate all forms of violence against women". In this resolution, the Assembly, *inter alia*, called upon the international community to support national efforts to promote the empowerment of women and gender equality in order to enhance national efforts to eliminate violence against women and girls. It stressed that adequate resources should be assigned to United Nations bodies, specialized agencies, funds and programmes responsible for promoting gender equality and women's rights, and welcomed the adoption by the Statistical Commission of an interim set of indicators to measure violence against women.[191]

(v) *Trafficking*

a. Human Rights Council

On 17 June 2009, the Human Rights Council adopted resolution 11/3 entitled "Trafficking in persons, especially women and children". In this resolution, the Council reiterated its concerns about, *inter alia*, the increasing activities of those who profit from trafficking in persons, especially women and children, without regard for dangerous and inhumane conditions, in flagrant violation of domestic laws and international law, and contrary to international standards. It urged Governments to take appropriate measures to address the root factors that encourage trafficking in persons; to criminalize trafficking of persons in all its forms; to ensure protection and assistance to the victims of trafficking with full respect for their human rights, including through legislation, where appropriate; and to adopt or strengthen legislation or other measures to discourage the demand that fosters all forms of exploitation of persons and leads to trafficking of persons.

---

[186] Report of the Fourth World Conference on Women, 4–15 September 2005 (A/CONF.177/20).

[187] General Assembly resolutions S-23/2, annex, and S-23/3, annex.

[188] *Official Records of the Economic and Social Council, 2005, Supplement No. 7* and corrigendum (E/2005/27 and Corr.1), chap. I, sect. A; see also Economic and Social Council decision 2005/232

[189] United Nations, *Treaty Series*, vol. 1249, p. 13.

[190] United Nations, *Treaty Series*, vol. 2131, p. 83.

[191] Report of the Friends of the United Nations Statistical Committee on the Indicators on Violence Against Women, 24–27 February 2009 (E/CN.3/2009/13).

b. General Assembly

On 18 December 2009, the General Assembly adopted, on the recommendation of the Third Committee, resolution 64/178 entitled "Improving the coordination of efforts against trafficking in persons". In this resolution, the Assembly *inter alia* urged Member States that have not yet done so to consider taking measures to ratify or accede to international instruments concerning trafficking in persons, including the United Nations Convention against Transnational Organized Crime;[192] the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children;[193] and the Optional Protocol to the Convention on the Rights of the Child concerning sale of children, child prostitution and child pornography.[194] It called upon Governments to continue their efforts to criminalize trafficking in all its forms, including labour and sexual exploitation of children.

(*g*) Rights of the child

a. Human Rights Council

The Special Rapporteur on the sale of children, child prostitution and child pornography, Ms. Najat M'jid Maalla, submitted her report to the Human Rights Council on 2 July 2009.[195] In her report, the Special Rapporteur noted that Internet child pornography is criminalized by legislation in some countries, but is punishable only on the grounds that it is against public morals in other States. In order to prevent and eradicate child pornography, and to prevent the Internet from being used to disseminate and produce child pornography, or to solicit children for sexual purposes, the Special Rapporteur recommended that States ratify regional and international instruments dealing with child pornography. The Special Rapporteur also recommended that States adopt clear and comprehensive legislation that, *inter alia*, defines, prohibits and criminalizes child pornography on the Internet; stipulates that a minor can never consent to participation in sexual exploitation; and ensures that child victims of sexual exploitation are considered to be victims of human rights violations and receive appropriate care. In addition, the Special Rapporteur recommended that extraterritorial jurisdiction be established for all cases of sexual exploitation of children; that the principle of double jeopardy be abolished; and that mutual legal assistance be facilitated with a view to guaranteeing the appropriate prosecution of these crimes and the imposition of appropriate penalties.

On 17 June 2009, the Human Rights Council adopted resolution 11/1 entitled "Open-ended Working Group on the optional protocol to the Convention on the Rights of the Child to provide a communications procedure". In this resolution, the Council, *inter alia*, noted that there is no procedure under the Convention on the Rights of the Child for children and their representatives to have their concerns about implementation of rights set out in the Convention considered by an appropriate committee of independent experts. To this end, the Council decided to establish an open-ended working group to explore the

---

[192] General Assembly resolution 55/25 of 15 November 2000.

[193] General Assembly resolution 55/25 of 15 November 2000 (A/55/383).

[194] United Nations, *Treaty Series*, vol. 2171, p.247.

[195] Report of the Special Rapporteur on the sale of children, child prostitution and child pornography, 2 July 2009 (A/HRC/12/23).

possibility of elaborating an optional protocol providing a communications procedure complementary to the reporting procedure under the Convention.

On the same day, the Human Rights Council adopted resolution 11/7 entitled "Guidelines for the Alternative Care of Children". In this resolution, the Council, *inter alia*, considered the "Guidelines for the Alternative Care of Children"[196] and decided to submit them to the General Assembly for consideration, with a view to their adoption on the twentieth anniversary of the Convention on the Rights of the Child.

b. General Assembly

On 7 December 2009, the General Assembly adopted resolution 64/80 entitled "International Decade for a Culture of Peace and Non-Violence for the Children of the World, 2001–2010". In this resolution, the Assembly, *inter alia*, reiterated that the objective of the International Decade is to strengthen further global movement for a culture of peace following the observance of the International Year for the Culture of Peace in 2000. It encouraged civil society, including non-governmental organizations, to strengthen its efforts in furtherance of the objectives of the Decade.

On 18 December 2009, the General Assembly adopted, on the recommendation of the Third Committee, resolution 64/146 entitled "The Rights of the Child". In this resolution, the Assembly commemorated the twentieth anniversary of the adoption of the Convention on the Rights of the Child[197] and the fiftieth anniversary of the Declaration on the Rights of the Child.[198] It urged, *inter alia*, States that had not yet done so to become parties to the Convention and its Optional Protocols,[199] and called upon States already parties to the Convention to withdraw reservations that are incompatible with the object and purpose of the Convention or the Optional Protocols. It further urged State Parties to comply with their obligations under the Convention, particularly with regard to family relations, adoption or other forms of alternative care affecting children; economic and social well-being of children, including eradication of poverty, right to education, enjoyment of the highest attainable standard of physical and mental health and right to food; elimination of violence against children; and children affected by armed conflict. It also called for the prevention and eradication of the sale of children, child prostitution and child pornography, as well as protection of children in particularly difficult situations, and children alleged to have infringed or recognized as having infringed a penal law. Further, the Assembly recognized that children who are capable of forming their own views should be assured the right to express their views on all matters concerning them, and called upon States, *inter alia*, to provide support to children and adolescents to form and register their own associations and other child and adolescent-led initiatives, in accordance with national and international law. The Assembly also called upon States to ensure that a child's right to be heard is respected and their best interests taken as a primary consideration, in accordance with

[196] Report of the Human Rights Council on its eleventh session, 16 October 2009 (A/HRC/11/37), annex.

[197] United Nations, *Treaty Series*, vol. 1577, p. 3.

[198] General Assembly resolution 14/1386 of 20 November 1959.

[199] United Nations, *Treaty Series*, vol. 2171 p. 227 and vol. 2173 p. 222.

legal procedures and applicable international agreements, in situations where they are wrongfully removed or subjected to enforced disappearance.

On the same day, the General Assembly adopted, on the recommendation of the Third Committee, resolution 64/145 entitled "The girl child". In this resolution, the Assembly, *inter alia*, recognized that girl children are often at greater risk than boy children of being exposed to and encountering various forms of discrimination and violence. It stressed the need for full implementation of the rights of the girl child as provided under human rights instruments, and urged States to consider signing, ratifying or acceding to the Convention on the Rights of the Child,[200] the Convention on the Elimination of All Forms of Discrimination against Women[201] and the Convention on the Rights of Persons with Disabilities,[202] and the Optional Protocols[203] to these Conventions. It urged States to promote gender equality and equal access to basic social services, including education, nutrition, birth registration and health care, and to enact and strictly enforce laws to ensure that marriage is only entered into with the full and free consent of the intending spouses. In this respect, the Assembly called upon States with the support of international organizations, civil society and non-governmental organizations to generate social support for the enforcement of laws on the minimum legal age for marriage. It also urged States to enact and enforce legislation to protect girls from all forms of violence and exploitation, as well as the distribution over the Internet of child pornography. Further, it called upon the international community to create an environment where the well-being of the girl child is ensured, in order to ensure that all internationally agreed development and poverty eradication goals, including those set out in the Millennium Declaration,[204] are realized.

The General Assembly also adopted, on 18 December 2009, on the recommendation of the Third Committee, resolution 64/142, entitled "Guidelines for the Alternative Care of Children". In this resolution, the Assembly welcomed the Guidelines as a set of orientations to help inform policy and practice. It encouraged, *inter alia*, States to take the Guidelines into account and to bring them to the attention of the executive, legislative and judiciary bodies of the government, human rights defenders and lawyers, the media and the public in general.

(*h*) Migrants

a. Human Rights Council

On 18 June 2009, the Human Rights Council adopted resolution 11/9 entitled "The human rights of migrants in detention centres". In this resolution, the Council noted the work of the Special Rapporteur on the human rights of migrants and emphasized the importance of addressing the situation of migrants in detention centres and administra-

[200] United Nations, *Treaty Series*, vol. 1577, p. 3.

[201] United Nations, *Treaty Series*, vol. 2131 p. 83.

[202] General Assembly resolution 61/106 of 13 December 2006. Adopted on 13 December 2006 at the United Nations Headquarters in New York, and opened for signature on 30 March 2007, entered into force on 3 May 2008, in accordance with article 45 (1).

[203] United Nations, *Treaty Series*, vol. 2171 p. 81 and vol. 2173 p. 222; vol. 2131 p. 81.

[204] General Assembly resolution 55/2 of 8 September 2000.

tive detention, where there is the potential for migrants' human rights to be violated. It decided, *inter alia*, to hold a panel discussion on the issue of human rights of migrants in detention at its following session, in September 2009, where it proposed to discuss trends, good practices and challenges, as well as means of reducing recourse to and duration of detention for migrants entering a country in an irregular manner.

b. General Assembly

On 18 December 2009, the General Assembly adopted, on the recommendation of the Third Committee, resolution 64/139 entitled "Violence against women migrant workers". In this resolution, the Assembly encouraged Member States to consider signing and ratifying or acceding to conventions relating to the rights of migrant workers, and human rights treaties that contribute specifically to the protection of women migrant workers. It called upon all Governments to incorporate a human rights and gender perspective in legislation and policies relating to migration, labour and employment, for the protection of women migrant workers against violence, discrimination, exploitation and abuse. It also called upon Governments to adopt or strengthen measures to protect the human rights of women migrant workers, regardless of their immigration status, and to consider expanding dialogue with other States on devising innovative ways to promote legal channels of migration. In addition, it called upon Governments to put in place penal and criminal sanctions to punish perpetrators of violence against women migrant workers, and to take action to prevent any illegal deprivation of liberty of women migrant workers by organizations or individuals.

On the same day, the General Assembly adopted, on the recommendation of the Third Committee, resolution 64/166 entitled "Protection of migrants". In this resolution, the Assembly, *inter alia*, expressed concern over the impact of the economic and financial crisis on international migrants, and strongly condemned acts of racism, racial discrimination, xenophobia and related intolerances against migrants and the stereotypes often applied to them. It urged States to apply or reinforce existing laws against such acts, and in this context, reaffirmed the rights set out in the Universal Declaration of Human Rights[205] and the obligations under the International Covenant on Civil and Political Rights.[206] It further expressed concern about legislation and measures adopted by some States that may restrict the human rights and fundamental freedoms of migrants, and reminded States of their duty to comply with international human rights law obligations with regard to their treatment of migrants, including when migrants are in transit or at borders or migration checkpoints. It also requested States to enforce labour law effectively, in order to protect migrant workers' labour relations and work conditions, and reaffirmed the obligation of States to ensure full respect for the Vienna Convention on Consular Relations,[207] in particular with regard to allowing foreign nationals to contact consular officers of their country of origin in the event of arrest, imprisonment or detention.

[205] General Assembly resolution 3/217(III) of 10 December 1948.

[206] United Nations, *Treaty Series*, vol. 999, p. 171.

[207] United Nations *Treaty Series*, vol. 596, p. 261.

(*i*) Internally displaced persons

a. Human Rights Council

On 9 February 2009, the Representative of the Secretary-General on the human rights of internally-displaced persons, Mr. Walter Kälin, presented his report to the Human Rights Council.[208] In this report, the Representative noted with regret that the occurrence of internal displacement of people had increased over the past ten years, as a result not only of climate change, but also because of situations of protracted displacement. These usually occur as a result of unresolved conflicts, lack of political will amongst national Governments, or insufficient support by international actors. In light of this, the Representative re-emphasized the significance of the Guiding Principles on Internal Displacement,[209] presented to the Commission on Human Rights in its fifty-fourth session by the previous Representative of the Secretary-General Mr. Francis Deng, and called on Member States to develop the capacity and political will to implement them in practice. The Representative acknowledged that there had been increasing efforts to incorporate the Guiding Principles into national legal and policy frameworks, acknowledging in particular national policies of Iraq and Germany, and of the Organization for Security and Co-operation in Europe. The Representative noted, however, that the number of displaced persons had not declined over the past ten years. Further, the Representative acknowledged that many countries affected by internal displacement had not enacted legislation and policies in line with the Guiding Principles, and that where such legislation and policies did exist, there was often a significant gap between the texts of the laws and policies and their implementation in practice. The Representative recommended that States draft national legislation and policies consistent with the Guiding Principles, scrupulously respect their obligations under international human rights law, international humanitarian law and international criminal law to refrain from acts amounting to violations of the Guiding Principles, and protect internally displaced persons. In addition, the Representative recommended that, where violations occur, States should investigate, prosecute and punish crimes against humanity and war crimes causing internal displacement or committed against those who have been displaced.

On 3 August 2009, the Representative presented a report to the Human Rights Committee entitled "Protection of and assistance to internally displaced persons".[210] In this report, the Representative outlined relevant legal frameworks and identified typical human rights protection challenges which persons displaced or at risk of being displaced may face as a result of climate change. The Representative again acknowledged that the normative framework for human rights protection with regard to internally displaced persons is the Guiding Principles on Internal Displacement, but noted that there is a lack of distinction in the Principles between voluntary population movements, for example where people

[208] Report of the Representative of the Secretary-General on the human rights of internally-displaced persons, 9 February 2009 (A/HRC/10/13).

[209] Report of the Representative of the Secretary-General, Mr Francis M. Deng, submitted pursuant to Commission resolution 1997/39, 11 February 1998 (E/CN.4/1998/53/Add.2).

[210] Report of the Representative of the Secretary-General on protection of and assistance to internally displaced persons, 3 August 2009, (A/64/214). See also Report of the Representative of the Secretary-General on protection of internally displaced persons in situations of natural disasters, 5 March 2009 (A/HRC/10/13/Add.1).

relocate to find a better life in areas not affected by extreme weather events, and forced displacement, where movement is triggered by a threat to life, health, property or livelihood. The Representative also noted that where internally displaced persons move across international boundaries, they are entitled to general human rights guarantees in the receiving state, but not to a right of entry into that state, unless the Government in their state of origin has withheld or obstructed assistance to them in order to punish or marginalize them on one of the grounds specified in the 1951 Convention relating to the status of refugees.[211] In addition to the conclusions made in the report of 9 February 2009, the Representative recommended that States criminalize arbitrary displacement, to the extent that it amounts to an international crime, and bring all perpetrators to justice, regardless of their affiliation or rank; adopt and implement disaster-management laws, policies and mechanisms to protect persons from natural hazards; mitigate the effects of natural disasters and protect persons during and after natural disasters; and adopt laws and policies on internal displacement that outline the specific duties of national actors, assign responsibilities among State institutions and establish adequate funding mechanisms.

(*j*) Minorities

Human rights Council

On 16 February 2009, the Independent Expert on Minority Issues, Ms. Gay McDougall, presented her report to the Human Rights Council.[212] In her report, the Independent Expert outlined the outcomes of her visits to Guyana and Greece, her engagement with non-governmental organizations, including participation in the Regional Workshop on Minority Issues in Southeast Asia from 21 to 23 February 2008, and engagement in the Forum on Minority Issues in accordance with Human Rights Council resolution 6/15 of 28 September 2007.

(*k*) Indigenous issues

Human rights Council

On 15 July 2009, the Special Rapporteur on the situation on human rights and fundamental freedoms of indigenous people, Mr. James Anaya, presented his report to the Human Rights Council.[213] In this report, the Special Rapporteur summarized his principal areas of work, and discussed in detail States' compliance with the duty to consult in good faith with indigenous people on decisions affecting them, as contained in the United Nations Declaration on the Rights of Indigenous People[214] and rooted in international human rights law. In the Special Rapporteur's view, the duty applies whenever a State makes a decision that may affect indigenous peoples in a way not felt by others in society, even if it does not affect a recognized right or legal entitlement. Further, the Special

[211] United Nations, *Treaty Series*, vol. 189, p. 137.

[212] Report of the independent expert on minority issues, 16 February 2009 (A/HRC/10/11).

[213] Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, 15 July 2009 (A/HRC/12/34).

[214] General Assembly resolution 61/295 of 13 September 2007.

Rapporteur noted that the duty of States to protect the human rights of indigenous peoples cannot be avoided by delegation to a private company or other entity, and that it should take place at the earliest possible opportunity and at all stages of decision-making. The Special Rapporteur recommended that States develop adequate analyses and impact assessments of proposed legislative or administrative measures, and make these available to the indigenous peoples concerned well in advance of consultation. He also recommended that States endeavour to ensure that indigenous people have sufficient resources to participate in consultations, and that, where private companies are involved, States should develop specific mechanisms to monitor closely company behaviour and ensure full respect for indigenous peoples' rights.

(*1*) Terrorism and human rights[215]

a. Human rights Council

On 26 March 2009, the Human Rights Council adopted resolution 10/10 entitled "Protection of human rights and fundamental freedoms while countering terrorism". In this resolution, the Council, *inter alia*, called upon States to ensure that any measures taken to counter terrorism comply with international law, and in particular international human rights, refugee and humanitarian law. It urged States to ensure respect for the right to be equal before the courts and tribunals and to a fair trial, as required under relevant international human rights law, and in particular under article 14 of the International Covenant on Civil and Political Rights.[216] In addition, it requested that the Special Rapporteur on the promotion and protection of human rights while countering terrorism prepare a compilation of good practices on legal and institutional frameworks and measures that ensure human rights, for the benefit of intelligence agencies. It also stressed the important role of United Nations bodies that provide technical assistance related to the prevention and suppression of terrorism to consenting States, including, where appropriate, assistance with regard to the respect of international human rights law, international humanitarian law, refugee law and the rule of law.

b. General Assembly

On 18 December 2009, the General Assembly adopted, on the recommendation of the Third Committee, resolution 64/168 entitled "Protection of human rights and fundamental freedoms while countering terrorism".[217] In this resolution, the Assembly reaffirmed that States must ensure that any measures taken to combat terrorism comply with their obligations under international law, including recognition of non-derogable rights, as well as international human rights, refugee and humanitarian law. In particular, it urged States, in countering terrorism, to take all necessary steps to ensure that persons deprived of their liberty benefit from guarantees to which they are entitled under international law, including review of detention and other fundamental judicial guarantees. Further, it called upon

[215] For further information on terrorism, see sections 2 (g) and 16 (f) of this chapter.

[216] United Nations, *Treaty Series*, vol. 999, p. 171.

[217] See also General Assembly resolution 64/235 of 24 December 2009 entitled "Institutionalization of the Counter-Terrorism Implementation Task Force".

States to ensure that their pre-entry and border control mechanisms are clear and fully respect international law; to fully respect *non-refoulement* obligations under international refugee and human rights law; to refrain from exposing an individual to cruel, inhuman or degrading treatment or punishment by way of returning them to another country, insofar as it would be contrary to international law to do so; and to ensure that their laws criminalizing acts of terrorism are accessible, formulated with precision, non-discriminatory, non-retroactive, and in accordance with international law, including international human rights law. It also urged States to ensure that interrogation methods used against terrorist suspects are consistent with their international obligations, and that any person whose human rights or fundamental freedoms have been violated has access to an effective remedy, and receives adequate, effective and prompt reparations, where appropriate.

On the same day, the General Assembly also adopted, on the recommendation of the Third Committee, resolution 64/177 entitled "Technical assistance for implementing the international conventions and protocols related to terrorism". In this resolution, the Assembly, *inter alia*, urged Member States that have not yet done so to consider becoming parties to international conventions and protocols related to terrorism, and recognized the importance of developing and maintaining fair and effective criminal justice systems in establishing strategies to combat terrorism. It requested the United Nations Office of Drugs and Crime to reinforce the provision of technical assistance to Member States for the ratification and legislative incorporation of those international legal instruments, as well as the building of national capacity to strengthen criminal justice systems and the rule of law. The Assembly also urged Member States to strengthen international cooperation in order to prevent and combat terrorism, including by entering into bilateral and multilateral treaties on extradition and mutual legal assistance.

(*m*) Promotion and protection of human rights

(i) *International cooperation and universal instruments*

a. Human Rights Council

On 26 March 2009, the Human Rights Council adopted resolution 10/6 entitled "Enhancement of international cooperation in the field of human rights". In this resolution, the Council, *inter alia*, reaffirmed that it is 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, including through international cooperation. It recognized that States have a collective responsibility to uphold the principles of human dignity, equality and equity at the global level, and called upon all Member States, specialized agencies and intergovernmental organizations to carry out a constructive dialogue and consultations for the enhancement of understanding, and promotion and protection of all human rights and fundamental freedoms. The Council also took note of the report of the United Nations High Commissioner for Human Rights[218] on the enhancement of international cooperation in the field of human rights.

[218] Report of the United Nations High Commissioner for Human Rights, 14 January 2009 (A/HRC/10/26).

b. General Assembly

On 18 December 2009, the General Assembly adopted, on the recommendation of the Third Committee, resolution 64/171 entitled "Enhancement of international cooperation in the field of human rights". In this resolution, the Assembly, *inter alia*, reaffirmed that it is 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, including through international cooperation. It also recognized that States have a collective responsibility to uphold the principles of human dignity, equality and equity at the global level, and called upon all Member States, specialized agencies and intergovernmental organizations to carry out a constructive dialogue and consultations for the enhancement of understanding, and promotion and protection of all human rights and fundamental freedoms.

(ii) *Ombudsman, mediator and other national human rights institutions in the promotion and protection of human rights*

General Assembly

On 18 December 2009, the General Assembly adopted, on the recommendation of the Third Committee, resolution 64/161 entitled "National institutions for the promotion and protection of human rights". In this resolution, the Assembly, *inter alia*, reaffirmed the importance of developing national institutions for the promotion and protection of human rights in working together with Governments to ensure full respect for human rights at the national level. It also recognized that under the Vienna Declaration and Programme of Action,[219] States have the right to choose the framework for national institutions that is best suited to its particular needs in order to promote human rights and fundamental freedoms for all. It encouraged national institutions for the promotion and protection of human rights to continue to play an active role in preventing and combating all violations of human rights as enumerated in the Vienna Declaration and Programme of Action and relevant international instruments.

(iii) *The right to the truth*

Human Rights Council

On 1 October 2009, the Human Rights Council adopted resolution 12/12 entitled "Right to the truth". In this resolution, the Council, *inter alia*, 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. It encouraged States to consider establishing specific judicial mechanisms and, where appropriate, truth and reconciliation commissions to complement the justice system, in order to investigate gross violations of human rights and serious violations of international humanitarian law. It also encouraged States to participate in exchange of information concerning administrative, legislative, judicial and non-judicial measures. Further, it encouraged States to design programmes and other measures

[219] Report of the World Conference on Human Rights, 14–25 June 1993 (A/CONF.157/24 (Part I)).

to protect witnesses and other individuals who cooperate with judicial and quasi-judicial bodies, such as human rights and truth commissions. In this regard, it requested that the United Nations High Commissioner for Human Rights prepare a report on the need to develop common standards and best practices for the protection of witnesses.

(iv) *Human rights and the right to promote and protect universally recognized human rights*

General Assembly

On 18 December 2009, the General Assembly adopted, on the recommendation of the Third Committee, resolution 64/163 entitled "Declaration on the right and responsibility of individuals, groups and organs of society to promote and protect universally recognized human rights and fundamental freedoms". In this resolution, the Assembly, *inter alia*, noted with deep concern that people engaged in defending human rights and fundamental freedoms frequently face threats and harassment, and expressed grave concern that in some instances, national security and counter-terrorism legislation has been used to target human rights defenders, or hindered their work and safety in a manner contrary to international law. It called upon all States to promote and give full effect to the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms.[220] It also encouraged States to promote awareness and training in regard to the Declaration, in order to enable officials, agencies, authorities and members of the judiciary to observe the provisions of the Declaration and thus promote a better understanding of individuals, groups and organs of society engaged in promoting and protecting human rights, as well as their work. Further, it reaffirmed that national legislation consistent with the Charter of the United Nations, along with other international obligations of States in the field of human rights and fundamental freedoms, is the juridical framework within which human rights defenders conduct their activities. To this end, it called upon States, in accordance with national legislation and international law, to respect, protect and ensure the rights to freedom of expression and association of human rights defenders, and to ensure registration procedures for civil society organizations are transparent, non-discriminatory, expeditious and inexpensive, and allow the possibility for appeal.

(*n*) Persons with disabilities

a. Human Rights Council

On 26 March 2009, the Human Rights Council adopted resolution 10/7 entitled "Human rights of persons with disabilities: national frameworks for the promotion and protection of human rights of persons with disabilities". In this resolution, the Council, *inter alia*, welcomed the entry into force of the Convention on the Rights of Persons with Disabilities[221] and its Optional Protocol[222] on 3 May 2008, and the first meeting of the

[220] General Assembly resolution of 9 December 1998 (A/RES/53/144), annex.

[221] General Assembly resolution 61/106 of 13 December 2006, annex I.

[222] *Ibid.*, annex II.

Conference of States and of the Committee on the Rights of Persons with Disabilities. It encouraged States that had made reservations to the Convention to regularly review the effect and continued relevance of such reservations, and to consider the possibility of withdrawing them. It also encouraged States to promptly undertake a review of all legislation and other measures, and to identify, modify or abolish existing laws, regulations, customs and practices that constitute discrimination against persons with disabilities. The Council also encouraged States to exchange information on legislative measures and models that guarantee the rights of persons with disabilities, and called upon them to give practical effect to the principle of non-discrimination on the basis of disability, particularly with regard to enjoyment of political rights and effective access to justice, and the availability of redress where rights are denied.

b. General Assembly

On 18 December 2009, the General Assembly adopted, on the recommendation of the Third Committee, resolution 64/131 entitled "Realizing the Millennium Goals for persons with disabilities". In this resolution, the Assembly urged Member States to promote the Millennium Goals for persons with disabilities, *inter alia*, by explicitly including disability issues and persons with disabilities in national plans and tools designed to contribute to the full realization of the Goals. It encouraged Governments to develop and accelerate the exchange of information, guidelines and standards, best practices, legislative measures and government policies regarding the situation of persons with disabilities and disability issues, in particular as they relate to inclusion and accessibility. It also called upon Governments to build a knowledge base of data and information about the situation of persons with disabilities that could be used to enable development policy planning, monitoring, evaluation and implementation to be disability-sensitive. It further called upon Governments to enable persons with disabilities to participate as agents and beneficiaries of development, particularly in including persons with disabilities in the development areas, *inter alia*, of poverty and hunger eradication, achieving universal primary education, promoting gender equality and reducing child mortality.

On the same day, the General Assembly adopted, on the recommendation of the Third Committee, resolution 64/154, entitled "Convention on the Rights of Persons with Disabilities and the Optional Protocol thereto". In this resolution, the Assembly welcomed the fact that an increasing number of States had signed or ratified the Convention on the Rights of Persons with Disabilities and its Optional Protocol, and called upon States which had not yet signed and ratified them to consider doing so as a matter of priority. To this end, it invited the Secretary-General to provide assistance to States in ratifying the Convention and its Optional Protocol, and to continue to implement standards and guidelines for the accessibility of facilities and services of the United Nations system. It also requested the Secretary-General to take further action to promote the rights of persons with disabilities in the United Nations system in accordance with the Convention, including the retention and recruitment of persons with disabilities, and called upon United Nations agencies and organizations, as well as intergovernmental and non-governmental organizations, to continue to strengthen efforts to disseminate information on the Convention and its Optional Protocol, including to young people and children.

(*o*) Contemporary forms of slavery

a. Human Rights Council

The Special Rapporteur on Contemporary Forms of Slavery, Ms. Gulnara Shahinian, presented her report to the Human Rights Council on 10 July 2009.[223] In her report, the Special Rapporteur considered the effect of forced labour and the lack of national legislative measures to prevent it from occurring. The Special Rapporteur noted that slavery is prohibited in international human rights law, under not only the Universal Declaration of Human Rights,[224] but also the International Covenant on Civil and Political Rights,[225] the International Covenant on Economic, Social and Cultural Rights,[226] the International Slavery Convention and Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery.[227] The Special Rapporteur also considered the occurrence of bonded labour, where safeguards such as reasonable conditions of repayment or agreed interest rates do not exist, potentially leaving a person vulnerable to protect themselves from long-term or perpetual debt. The Special Rapporteur linked the occurrence of bonded labour with poverty and low-level education, most prevalent in socially excluded groups such as indigenous communities, minorities and migrants, and noted the view expressed by certain non-governmental organizations that isolation, lack of guidance, lack of contact with institutions and authorities and lack of basic services created an environment that facilitated exploitation and forced labour. The Special Rapporteur noted that it is the responsibility of States to enact relevant legislation and policies to combat forced labour and protect victims, but that where such legislation has been enacted by States, it has nonetheless been difficult to enforce. The Special Rapporteur recommended that human rights be mainstreamed into development programmes to address the root causes of slavery, and that specific, enforceable legislation be enacted to address forced labour in a global context, incorporating criminalization of different forms of forced labour, including human trafficking.

b. General Assembly

On 16 November 2009, the General Assembly adopted, without reference to a Main Committee, resolution 64/15 entitled "Permanent memorial to and remembrance of the victims of slavery and the transatlantic slave trade". In this resolution, the Assembly welcomed the initiative of the States members of the Caribbean Community to erect, at a place of prominence at the United Nations Headquarters, a permanent memorial acknowledging the tragedy and legacy of slavery and the transatlantic slave trade. It also welcomed the appointment of a Goodwill Ambassador to assist with re-engaging international attention on the horrific nature of slavery, the transatlantic slave trade and its legacy of discrimination. Further, it took note of the report of the Secretary-General on the programme of educational outreach on transatlantic slave trade and slavery,[228] which highlights develop-

[223] A/HRC/12/21.

[224] General Assembly resolution 3/217(III) of 10 December 1948.

[225] United Nations, *Treaty Series*, vol. 999, p. 171.

[226] United Nations, *Treaty Series*, vol. 993, p. 3.

[227] United Nations, *Treaty Series*, vol. 266, p. 3.

[228] A/64/299.

ments relating to the diverse educational outreach strategy to increase awareness of and educate future generations about the causes, consequences, lessons and legacy of the four-hundred-year-long slave trade and to communicate the dangers of racism and prejudice. The Assembly finally decided to include in the provisional agenda of its sixty-fifth session an item entitled "Follow-up to the commemoration of the two-hundredth anniversary of the abolition of the transatlantic slave trade".

(*p*) Miscellaneous

(i) *Effects of economic reform policies and foreign debt on the full enjoyment of all human rights, particularly economic, social and cultural rights*

Human Rights Council

On 17 June 2009, the Human Rights Council adopted resolution 11/7 entitled "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". In this resolution, the Council, *inter alia*, welcomed the report of the independent expert on the effects of foreign debt and other related international financial obligations on the full enjoyment of human rights,[229] and in particular the development of draft general guidelines on foreign debt and human rights, and the issue of illegitimate debt. While it recognized that States have the right and responsibility to choose its means and goals of development, it urged the international community to take appropriate measures and actions for the implementation of pledges, commitments, agreements and decisions of the major United Nations conferences and summits, including the Millennium Summit,[230] the World Conference on Human Rights,[231] the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance,[232] the World Conference on Sustainable Development[233] and the International Conference for Financing and Development.[234] The Council also stressed the need for economic reform programmes arising from foreign debts to be country-driven, and for any negotiations and conclusion of debt relief and new loan agreements to be formulated with public knowledge and transparency, and with the effective participation of all components of society, including legislative bodies and human rights organizations.

---

[229] Report 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 of 3 April 2009 (A/HRC/11/10).

[230] United Nations Millennium Declaration, General Assembly resolution 55/2 of 8 September 2000.

[231] Report of the World Conference on Human Rights, 14–25 June 1993 (A/CONF.157/24 (Part I)).

[232] Commission on Human Rights resolution 2003/30 of 23 April 2003 (E/CN.4/RES/2003/30).

[233] Report of the World Summit on Sustainable Development, 26 August—4 September 2002 (A/CONF.199/20) and General Assembly resolution 57/253 of 20 December 2002.

[234] Report of the Secretary-General on the outcome of the International Conference on Financing for Development, 20 December 2002, (A/57/344); Report of the Secretary-General on follow-up efforts to the International Conference on Financing for Development, 18 June 2003 (A/57/319-E/2005/85); and Report on the International Conference on Financing for Development, 18–22 March 2002 (A/CONF.198/11).

The Council also urged States, international financial institutions and the private sector to take urgent measures to alleviate the debt problems of developing countries, so that more financial resources can be used for health care, research and treatment for their populations. It further reaffirmed that the exercise of the basic rights of people from debtor countries to food, housing, clothing, employment, education, health services and a healthy environment cannot be subordinated to the implementation of structural adjustment policies, growth programmes and economic reforms arising from the debt.

On 23 February 2009, the Council also adopted resolution S-10/11 entitled "The impact of the global economic and financial crises on the universal realization and effective enjoyment of human rights". In this resolution, the Council, *inter alia*, recognized the severe impact of the economic and financial crises on the ability of countries to mobilize resources for development and to address the impact of these crises, and called upon States and the international community to alleviate any negative impacts of these crises on the realization and effective enjoyment of human rights. In particular, it called upon States to refrain from reducing financial resources for development, and to make concerted and sustained efforts to contribute to an early recovery. It reaffirmed that an open, equitable, predictable and non-discriminatory multilateral trading system can substantially stimulate development worldwide, and urged the international community to support national efforts to, *inter alia*, establish and preserve social safety nets for the protection of the most vulnerable segments of their society. Finally, it invited relevant thematic special procedures and treaty bodies to consider the impact of the global economic and financial crises on the realization and effective enjoyment of human rights, and called upon States to continue their financial contributions to international organizations, particularly to the Office of the United Nations High Commissioner for Human Rights.

(ii) *Human rights and unilateral coercive measures*

a. General Assembly

On 18 December 2009, the General Assembly adopted, on the recommendation of the Third Committee, resolution 64/170 entitled "Human rights and unilateral coercive measures". In this resolution, the Assembly, *inter alia*, urged States to cease adopting or implementing any unilateral measures not in accordance with international law, the Charter of the United Nations and the norms and principles governing peaceful relations among States. In particular, it urged States to cease implementing measures which create obstacles to trade relations between States, and which impede the full achievement of economic and social development by the population of affected countries, in particular children and women, or that hinder their well-being and enjoyment of human rights. It further called upon Member States to neither recognize nor apply measures of an extraterritorial nature that threaten the sovereignty of States, and to take administrative and legislative measures, as appropriate, to counteract the extraterritorial applications or effects of such measures. In addition, it reaffirmed that essential goods such as food and medicines should not be used as tools for political coercion, and urged the Human Rights Council to take fully into account the impact of unilateral coercive measures, including through the enactment of national laws and their extraterritorial application, which are not in conformity with international law.

(iii) *Human rights and climate change*

a. Human Rights Council

On 25 March 2009, the Human Rights Council adopted resolution 10/4 entitled "Human rights and climate change". In this resolution, the Council noted that climate change-related impacts have a range of implications on, *inter alia*, the right to life, the right to adequate food the right to the highest attainable standard of health, the right to adequate housing, the right to self-determination and human rights obligations related to access to safe drinking water and sanitation. It decided to hold a panel discussion on the relationship between climate change and human rights in order to contribute to the realization of the goals set out in the Bali Action Plan.[235] Further, it welcomed the report of the Special Rapporteur[236] on adequate housing as a component of the right to an adequate standard of living and encouraged other special mandate holders to give consideration to climate change within their respective mandates.

b. General Assembly

On 4 December 2009, the General Assembly adopted, on the recommendation of the Second Committee, resolution 64/73 entitled "Protection of global climate for present and future generations of humankind". In this resolution, the Assembly, *inter alia*, called upon States to work cooperatively towards achieving the ultimate objective of the 1992 United Nations Framework Convention on Climate Change[237] through urgent implementation of its provisions. It urged States that had not yet ratified the Convention to do so in a timely manner, and recognized that efforts to address climate change should be carried out through the promotion of economic development, social development and environmental protection, with a view to enhancing the sustainable development and sustained economic growth of developing countries, as well as eradicating poverty. It also recognized the urgency of providing financial and technical resources, as well as capacity-building and access to and transfer of technology, to assist countries adversely affected by climate change, and invited the international community to fulfil its commitments to replenish the Global Environment Facility Trust Fund.

---

[235] Report of the Conference of the Parties on its thirteenth session, 3–15 December 2007 (FCCC/CP/2007/6/Add.1).

[236] A/64/225.

[237] United Nations, *Treaty Series*, vol. 1771, p. 107.

6. Women[238,239]

(*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-third session in New York from 2 to 13 March 2009. In 2009, the Commission was mandated, in the multi-year programme of work adopted by the Economic and Social Council, in its resolution 2006/9 of 25 July 2006, to consider as its priority the theme "The equal sharing of responsibilities between women and men, including in caregiving in the context of HIV/AIDS".[240]

During its fifty-third session, the Commission adopted two resolutions[241] to be brought to the attention of the Economic and Social Council, of which one is highlighted below.

In its resolution 53/2, entitled "Women, the girl child and HIV and AIDS", the Commission welcomed the report of the Secretary-General on women, the girl child and HIV and AIDS,[242] and reaffirmed the need for Governments to intensify efforts in the implementation of commitments contained in the Declaration of Commitment on HIV/AIDS,[243] the Political Declaration on HIV/AIDS,[244] the Beijing Platform for Action,[245] and the Programme of Action of the International Conference on Population and Development.[246] It also reaffirmed the commitment to achieve universal access to reproductive health by 2015, and to comprehensive HIV prevention programmes, treatment, care and support by 2010. The Commission urged Governments to strengthen legal, policy, administrative and other measures for the prevention and elimination of all forms of violence against women and girls, and to ensure that violence against women is addressed as an integral part of

---

[238] See also the section 5 of this chapter on human rights.

[239] 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.

[240] For the report of the Commission on the status of Women on its fifty-third session, see *Official Records of the Economic and Social Council, 2009 Supplement No. 7*, E/2009/27-E/CN.6/2009/15.

[241] Resolutions 53/1 entitled "Preparations for the fifty-fourth session of the Commission on the Status of Women", and resolution 53/2 entitled "Women, the girl child and HIV and AIDS".

[242] Report of the Secretary-General, "Women, the girl child and HIV/AIDS" of 9 December 2008.

[243] General Assembly resolution S26–2, "Declaration of Commitment on HIV/AIDS" of 27 June 2001 (A/RES/S-26/2).

[244] General Assembly resolution 60/262, "Political Declaration on HIV/AIDS" of 2 June 2006 (A/RES/60/262).

[245] Report of the Fourth World Conference on Women, 4–15 September 2005 (A/CONF.177/20).

[246] Report of the International Conference on Population and Development, 5–13 September 1994, chap. 1, resolution 1, Annex.

their national HIV and AIDS responses. It also urged Governments, where they had not done so, to institute and ensure the enforcement of laws to protect women and girls from early and forced marriage and rape, and to ensure that the dignity, rights and privacy of women and girls are protected. In addition, it urged Governments to prioritize and expand access to treatment for all people in all settings, and to ensure that women and girls have equitable and sustained access to treatment for HIV/AIDS, opportunistic infections and other HIV-related diseases appropriate to their age, health and nutritional status, with the full protection of their human rights.

(*b*) General Assembly

On 18 December 2009, the General Assembly adopted, on the recommendation of the Third Committee, resolution 64/141, entitled "Follow-up to the Fourth World Conference on Women and full implementation of the Beijing Declaration and Platform for Action and the outcome of the twenty-third special session of the General Assembly". In this resolution, the Assembly, *inter alia*, took note with appreciation of the report of the Secretary-General on the measures taken and progress achieved in follow-up to the Beijing Declaration and Platform for Action, and the outcome of the twenty-third special session of the General Assembly.[247] It called upon States which are parties to the Convention on the Elimination of All Forms of Violence against Women[248] to comply fully with their obligations under that Convention, and urged all Member States which had not ratified or acceded to the Convention or its Optional Protocol[249] to consider doing so. It also reaffirmed that States have an obligation, *inter alia*, to implement laws and strategies to eliminate violence against women and girls; to provide protection to victims; and to investigate, prosecute and punish perpetrators of violence against women and girls, with failure to do so amounting to a violation, nullification or impairment of their human rights and fundamental freedoms.

On the same day, the General Assembly adopted, on the recommendation of the Third Committee, resolution 64/140 entitled "Improvement of the situation of women in rural areas". In this resolution, the Assembly, *inter alia*, took note of a report of the Secretary-General on this topic[250] and urged Member States to attach greater importance to the improvement of the situation of rural women in their national, regional and global development strategies. It suggested that this could be achieved by, *inter alia*, adopting national legislation to protect the knowledge, innovations and practices of women in indigenous and local communities relating to traditional medicines, biodiversity and indigenous technologies; and designing, revising and implementing laws to ensure that rural women are accorded full and equal rights to own and lease land and other property. It also strongly encouraged Member States, United Nations entities and all other relevant stakeholders

[247] Report of the Secretary-General, "Measures taken and progress achieved in follow-up to the Beijing Declaration and Platform for Action and the outcome of the twenty-third special session of the General Assembly", 3 August 2009 (A/64/218).

[248] United Nations, *Treaty Series*, vol. 2131, p. 81.

[249] United Nations, *Treaty Series*, vol. 2131, p. 83.

[250] Report of the Secretary-General, "Improvement of the situation of women in rural areas", 29 July 2009 (A/64/190).

to take measures to identify and address any negative impact of the current global crises on women in rural areas, including legislation, policies and programmes that strengthen gender equality and the empowerment of women.

Also on the same day, the General Assembly adopted, on the recommendation of the Third Committee, resolution 64/139 entitled "Violence against women migrant workers".[251] In this resolution, the Assembly, *inter alia*, took note with appreciation of the report of the Secretary-General on this topic,[252] and encouraged Member States to consider signing and ratifying or acceding to relevant international labour law conventions, human rights treaties and other relevant conventions, including the International Covenant on the Protection of the Rights of All Migrant Workers and Members of their Families;[253] the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime;[254] and the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime.[255] It called upon all Governments to incorporate a human rights and gender perspective in legislation and policies on international migration and labour and employment, and to adopt or strengthen measures to protect the rights of women migrant workers, regardless of their immigration status. It also urged Governments to enhance bilateral, regional, interregional and international cooperation to address violence against women migrant workers, and to take into account the best interests of the child, by adopting or strengthening measures to promote and protect the rights of migrant girls, including unaccompanied girls.

7. Humanitarian matters

(*a*) Economic and Social Council

On 22 July 2009, the Economic and Social Council adopted resolution 2009/3 entitled "Strengthening of the coordination of emergency humanitarian assistance of the United Nations". In this resolution, the Council, *inter alia*, took note of the report of the Secretary-General on strengthening coordination of emergency humanitarian assistance of the United Nations[256] and encouraged Member States and relevant regional organizations to strengthen operational and legal frameworks for international disaster relief. It also urged all actors engaged in providing international humanitarian assistance to fully commit to and duly respect the guiding principles contained in the annex to General Assembly resolution 46/182 adopted on 19 December 1991, and called on all parties to armed conflict to comply with their obligations under international humanitarian law, human rights law and refugee law.

---

[251] For more information on the human rights of migrants and the integration of human rights of women and the gender perspective, see section 5 of this chapter.

[252] Report of the Secretary-General, "Violence against women migrant workers", 16 July 2009, (A/64/152).

[253] United Nations, *Treaty Series*, vol. 2220, p. 3.

[254] United Nations, *Treaty Series*, vol. 2237, p. 343.

[255] United Nations, *Treaty Series*, vol. 2241, p. 507.

[256] A/64/84-E/2009/87.

(*b*) General Assembly

On 7 December 2009, the General Assembly adopted resolution 64/76[257] entitled "Strengthening of the coordination of emergency humanitarian assistance of the United Nations". In this resolution, the Assembly, *inter alia*, urged Member States to promote greater respect for, and adherence to, the humanitarian principles of humanity, neutrality, impartiality and independence. With specific regard to disaster risk reduction, it encouraged the United Nations system and humanitarian partners to strengthen response capacities and coordination with development actors at the local, national and regional levels.

On the same day, the General Assembly adopted resolution 64/77 entitled "Safety and security of humanitarian personnel and protection of United Nations personnel". In this resolution, the Assembly, *inter alia*, recalled the need to promote and ensure respect for the principles and rules of international law, and that the primary responsibility under international law for the security and protection of humanitarian and United Nations or associated personnel lies with the Government hosting a United Nations operation. The Assembly urged all parties involved in armed conflicts to ensure the security and protection of all humanitarian and United Nations or associated personnel, in accordance with their obligations under international humanitarian law. In addition, the Assembly affirmed the need for States to ensure that perpetrators of attacks against humanitarian and United Nations or associated personnel are brought to justice under local laws and in accordance with international law obligations. The Assembly also recalled that attacks intentionally directed against personnel involved in a humanitarian or peacekeeping mission in accordance with the Charter of the United Nations are included as war crimes under the Rome Statute of the International Criminal Court.[258] It called upon States to consider becoming parties to the Optional Protocol to the Convention on the Safety of the United Nations and Associated Personnel[259] and to put in place appropriate national legislation, as necessary, to enable its effective implementation. Further, the Assembly strongly urged all States to take measures to ensure respect for the inviolability of United Nations premises, and stressed the need for better coordination between the United Nations and host Governments on the use and deployment of essential equipment required to provide for the safety and security of United Nations and associated personnel.

On 22 January 2010, the General Assembly adopted resolution 64/251 entitled "International cooperation on humanitarian assistance in the field of natural disasters, from relief to development". In this resolution, the Assembly, *inter alia*, called upon States to fully implement the Hyogo Declaration[260] and to accelerate the implementation of the Hyogo Framework for Action 2005—2015: Building the Resilience of Nations and Communities

[257] For other resolutions dealing with humanitarian assistance, see resolution 64/74 entitled "Humanitarian assistance, emergency relief and rehabilitation for El Salvador as a result of the devastating effects of Hurricane Ida"; resolution 64/75 entitled "Participation of volunteers, "White Helmets", in the activities of the United Nations in the field of humanitarian relief, rehabilitation and technical cooperation for development"; and resolution 64/250 entitled "Humanitarian assistance, emergency relief and rehabilitation for Haiti in response to the devastating effects of the earthquake in that country".

[258] United Nations, *Treaty Series*, vol. 2187, p.3.

[259] Adopted on 8 December 2005 by resolution General Assembly 60/42.

[260] A/CONF.206/6 and Corr.1, chapter I, resolution 1.

to Disasters.[261] It also emphasized the promotion and strengthening of disaster preparedness at all levels, in particular in hazard-prone areas, and called upon States to continue to implement necessary legislative and other appropriate measures to mitigate the effects of natural disasters and integrate disaster risk reduction strategies into development planning. The Assembly took note of the report of the Secretary-General,[262] and stressed the importance of strengthening international cooperation, particularly through the effective use of multilateral mechanisms and timely provision of humanitarian assistance through all phases of a disaster, including the provision of adequate resources. Further, the Assembly acknowledged that global climate change, among other factors, contributes to the intensity and frequency of natural disasters, and encouraged Member States and relevant regional and international organizations to strengthen disaster risk reduction and early warning systems in order to minimize the humanitarian consequences of natural disasters. It requested the United Nations system to improve its coordination of disaster recovery efforts, *inter alia*, by strengthening institutional, coordination and strategic planning efforts in disaster recovery, in support of national authorities. It also called upon Member States and invited the private sector to consider increasing voluntary contributions to the Central Emergency Response Fund.

8. Environment

(*a*) United Nations Climate Change Conference in Copenhagen

The United Nations Climate Change Conference was held in Copenhagen, Denmark, from 7 to 19 December 2009. During the Conference, the fifteenth session of the Conference of the States Parties to the United Nations Framework Convention on Climate Change,[263] and the fifth session of the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol[264] were held.

The Conference of the States Parties to the United Nations Framework Convention on Climate Change adopted 13 decisions and one resolution. By decision 2/CP.15, the Conference took note of the Copenhagen Accord of 18 December 2009, annexed to that decision.[265] The Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol adopted 10 decisions and one resolution.[266]

(*b*) Economic and Social Council

On 31 July 2009, the Economic and Social Council adopted resolution 2009/28 entitled "The role of the United Nations system in implementing the ministerial declaration on

[261] *Ibid.*, resolution 2.

[262] A/64/331.

[263] United Nations, *Treaty Series*, vol. 1771, p. 107.

[264] United Nations, *Treaty Series* , vol. 2303, p. 148.

[265] For the report of the Conference of the Parties, see FCCC/CP/2009/11 and FCCC/CP/2009/11/Add.1.

[266] For the report of the Conference of the Parties, see FCCC/KP/CMP/2009/21 and FCCC/KP/CMP/2009/21/Add.1.

the internationally agreed goals and commitments in regard to sustainable development adopted at the high-level segment of the substantive session of the Economic and Social Council in 2008". In this resolution, the Council, *inter alia*, reiterated that sustainable development in its economic, social and environmental aspects is a key element of the overarching framework for United Nations activities. It invited the funds, programmes and agencies of the United Nations system to support initiatives directed towards implementing green initiatives in developing countries, and to integrate their work on water issues into United Nations-level efforts to support sustainable development strategies. It further requested that these bodies mainstream sustainable urbanization and upgrade urban poverty and slums; integrate social justice and equity concerns into United Nations system programmes; and continue to promote gender equality and empowerment of women.

(*c*) General Assembly

On 24 December 2009, the General Assembly adopted resolution 64/236,[267] on the recommendation of the Second Committee, entitled "Implementation of Agenda 21, the programme for the further implementation of Agenda 21 and the outcomes of the World Summit on Sustainable Development". In this resolution, the Assembly, *inter alia*, took note of the report of the Secretary-General on this topic[268] and reiterated that sustainable development is a key element of the overarching framework for United Nations activities, particularly in achieving internationally agreed development goals, including the Millennium Development Goals[269] and those contained in the Plan of Implementation of the World Summit on Sustainable Development ("the Johannesburg Plan of Implementation").[270] It called for effective follow-up and action with regard to commitments, programmes and time-bound targets adopted at the World Summit on Sustainable Development,[271] and for fulfilment of the provisions relating to the means of implementation, as contained in the Johannesburg Plan of Implementation. It reiterated that the Commission on Sustainable Development is the high-level body responsible for sustainable development in the United Nations system, and encouraged countries to present to the Commission national reports focussing on concrete progress in the implementation of development goals. The Assembly decided to organize the United Nations Conference on Sustainable Development at the highest possible level in 2012, where the objective will be to secure renewed political

[267] For other resolutions dealing with the environment, see resolution 64/195 entitled "Oil slick on Lebanese shores"; resolution 64/196 entitled "Harmony with nature"; and resolution 64/199 entitled "Follow-up to and implementation of the Mauritius Strategy for the further implementation of the programme of action for the sustainable development of small island developing states".

[268] Report of the Secretary-General on implementation of Agenda 21, the programme for the further implementation of Agenda 21 and the outcomes of the World Summit on Sustainable Development, 10 August 2009 (A/64/275).

[269] Adopted in General Assembly resolution 55/2 of 8 September 2000, entitled "Millennium Declaration".

[270] Report of the World Summit on Sustainable Development, Johannesburg, South Africa, 26 August-4 September 2002, (A/CONF.199/20), chap. I, resolution 1, annex.

[271] Report of the World Summit on Sustainable Development, Johannesburg, South Africa, 26 August-4 September 2002, (A/CONF.199/20).

commitment for sustainable development, and to assess progress on the implementation of outcomes of the major summits on sustainable development.

On 21 December 2009, the General Assembly adopted, on the recommendation of the Second Committee, resolution 64/204 entitled "Report of the Governing Council of the United Nations Environment Programme on its twenty-fifth session". In this resolution, the Assembly, *inter alia*, took note of the report of the Governing Council,[272] and underlined the need to further advance and fully implement the Bali Strategic Plan for Technology Support and Capacity-Building.[273] It reiterated the need for the United Nations Environment Programme to continue to conduct comprehensive, integrated and scientifically credible global environment assessments in order to support decision-making processes at all levels. Further, it emphasized the need to enhance coordination and cooperation among the relevant United Nations organizations, and between the United Nations Environment Programme and regional and subregional organizations, in promoting the environmental component of sustainable development.

On the same day, the General Assembly adopted resolution 64/198 entitled "Mid-term comprehensive review of the implementation of the International Decade for Action, 'Water for Life,' 2005—2015". In this resolution, the Assembly took note of two reports of the Secretary-General on sustainable development of water resources,[274] and encouraged Member States, the Secretariat, organizations of the United Nations system and major groups to continue in their efforts to achieve the internationally agreed water-related goals contained in Agenda 21,[275] the Programme for the Further Implementation of Agenda 21,[276] the United Nations Millennium Declaration,[277] and the Johannesburg Plan of Implementation.[278] In addition, the Assembly decided to convene a high-level international conference, in which it will assess the progress made in the implementation of the first half of the International Decade for Action, 'Water for Life,' 2005—2015,[279] and related internationally agreed water-related goals. It called upon Member States to undertake national reviews on implementation, and on the realization of internationally agreed water-related goals, with

---

[272] *Official Records of the General Assembly, Sixty-fourth Session, Supplement No. 25* (A/64/25).

[273] Governing Council of the United Nations Environment Programme, International environmental governance: implementation of decisions of the seventh special session of the Governing Council/Global Ministerial Environment Forum and the World Summit on Sustainable Development on the report of the Intergovernmental Group of Ministers or Their Representatives on International Environmental Governance, 23 December 2004 (UNEP/GC.23/6/Add.1 and Corr.1, annex).

[274] Report of the Secretary-General on activities undertaken during the International Year of Freshwater, 2003, and further efforts to achieve the sustainable development of water resources (A/59/167); and Report of the Secretary-General on actions taken in organizing the activities of the International Decade for Action, "Water for Life", 2005—2015, (A/60/158).

[275] Implemented in Report of the United Nations Conference on Environment and Development, Rio de Janeiro, 3–14 June 1992 (A/CONF.151/26/REV.1).

[276] Programme for the further implementation of Agenda 21, adopted on 28 June 1997, (A/RES/S/19–2).

[277] General Assembly resolution 55/2 of 8 September 2000, entitled "Millennium declaration".

[278] Report of the World Summit on Sustainable Development, Johannesburg, South Africa, 26 August-4 September 2002 (A/CONF.199/20), chapter I, resolution 1, annex.

[279] General Assembly resolution 58/217 of 23 December 2003.

a particular focus on progress, obstacles, constraints, actions and measures necessary for further implementation.

The General Assembly also adopted, on 21 December 2009, on the recommendation of the Second Committee, resolution 64/205 entitled "Sustainable mountain development". In this resolution, the Assembly recognized, *inter alia*, that sustainable mountain development is a key component in intergovernmental discussion on climate change, biodiversity loss and combating desertification. It encouraged Governments to integrate mountain sustainable development in national, regional and global policymaking and development strategies, and invited the international community to support developing countries in developing sustainable development strategies. This support may take the form of assistance in enabling policies and laws for the sustainable development of mountains, or in developing bilateral and multilateral and South-South cooperation relating to sustainable mountain development.

On the same day, the General Assembly adopted resolution 64/203, on the recommendation of the Second Committee, entitled "Convention on Biological Diversity". In this resolution, the Assembly took note of the report of the Executive Secretary of the Convention on Biological Diversity on the work of the Conference of the Parties to the Convention,[280] and urged Member States to fulfil their commitment to significantly reduce the rate of loss of biodiversity by 2010. It reaffirmed, subject to national legislation, the commitment to respect, preserve and maintain the knowledge, innovations and practices of indigenous and local communities relevant to the conservation and sustainable use of biological diversity. In addition, it invited countries which had not yet done so to ratify the Convention on Biological Diversity,[281] the Cartagena Protocol on Biosafety to the Convention on Biological Diversity[282] and the International Treaty on Plant Genetic Resources for Food and Agriculture.[283]

The General Assembly also adopted on the same day resolution 64/200 entitled "International strategy for disaster reduction". In this resolution, the Assembly, *inter alia*, urged Member States to continue to develop, update and strengthen disaster risk reduction, and called upon the international community to increase its efforts to fully implement the commitments set out in the Hyogo Declaration[284] and the Hyogo Framework for Action.[285] It encouraged the international community to continue providing adequate voluntary financial contributions to the United Nations Trust Fund for Disaster Reduction, and stressed the importance of implementing long-term programmes related to the eradication of poverty, sustainable development and disaster risk reduction management,

---

[280] Report of the Executive Secretary of the Convention on Biological Diversity, 30 July 2009 (A/64/202), chapter III.

[281] United Nations, *Treaty Series*, vol. 1760, p. 79.

[282] United Nations, *Treaty Series,* vol. 2226, p. 208.

[283] Food and Agriculture Organization of the United Nations, *Report of the Conference of FAO, Thirty-first Session, Rome, 2–13 November 2001* (C2001/REP), appendix D. Adopted by the Food and Agriculture Organization of the United Nations, resolution 3/200 of 3 November 2001.

[284] Report of the World Conference on Disaster Reduction, Kobe, Hyogo, Japan, 18–22 January 2005 (A/CONF.206/6), resolution 1.

[285] Report of the World Conference on Disaster Reduction, Kobe, Hyogo, Japan, 18–22 January 2005 (A/CONF.206/6), resolution 2.

particularly in developing countries. The Assembly designated 13 October as the date to commemorate International Day for Disaster Reduction.[286]

9. Law of the sea

(*a*) Reports of the Secretary-General

The Secretary-General submitted a number of reports[287] to the General Assembly at its sixty-fourth session under the agenda item entitled "Oceans and the law of the sea". In the comprehensive report on oceans and the law of the sea, the Secretary-General provided an overview of developments relating to the implementation of the United Nations Convention on the Law of the Sea[288] (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 2009.[289] That report contained 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 comprehensive report provided an overview of State practice, maritime claims and delimitation of maritime zones.[290]

The report also outlined the work carried out in 2009 by the three bodies established by the Convention, namely, the International Seabed Authority (ISA), the International Tribunal for the Law of the Sea (ITLOS)[291] and the Commission on the Limits of the Continental Shelf (CLCS).

In 2009, the ISA held its fifteenth session, during which the Council continued its deliberations on the draft regulations on prospecting and exploration for polymetallic sulphides in the international seabed Area beyond the limits of national jurisdiction. The Council could not adopt the draft as there was no agreement on the provision dealing with anti-monopoly and overlapping claims to potential mine sites in the seabed Area. It was agreed that deliberations would continue at the sixteenth session of the Authority, in 2010. In addition, the Legal and Technical Commission, a subsidiary organ of the Council, adopted revised Regulations on prospecting and exploration for ferromanganese crusts in the Area, which are to be considered by the Council at the sixteenth session.[292]

---

[286] General Assembly resolution 44/236 of 22 December 1989; General Assembly resolution 54/219 of 22 December 1999; General Assembly resolution 56/195 of 21 December 2001; and General Assembly resolution 57/256 of 20 December 2002.

[287] A/64/66, A/64/66/Add.1, A/64/66/Add.2 and A/64/305. At the time of preparation of this chapter the Secretary-General report to the General Assembly at its sixty-fifth session was not published yet. It will contain further details on activities carried out in 2009. Therefore, in this chapter, references have been made to other relevant United Nations documents, wherever possible.

[288] United Nations, *Treaty Series*, vol. 1833, p. 3.

[289] A/64/66/Add.1.

[290] A/64/66, Chapter III, and A/64/66/Add.1, Chapter III.

[291] For the work of the Tribunal, see chapter VII of this publication.

[292] For more information on the fourteenth session of the ISA see A/64/66/Add.1, paragraphs 62–66, and SPLOS/203, paragraphs 55–66.

In 2009, the CLCS held its twenty-third and twenty-fourth sessions,[293] during which it continued the examination of the submissions made, respectively, by Norway in the North East Atlantic and the Arctic, France in respect of the areas of French Guiana and New Caledonia, Mexico in respect of the Western Polygon in the Gulf of Mexico, Barbados, and the United Kingdom of Great Britain and Northern Ireland in respect of Ascension Island, as well as the joint submission made by France, Ireland, Spain and the United Kingdom in the area of the Celtic Sea and the Bay of Biscay. At the twenty-third session, formal presentations of submissions were made in the plenary by Indonesia in respect of the area of North West Sumatra, by Japan, as well as jointly by the Republic of Mauritius and the Republic of Seychelles, in respect of the Mascarene Plateau. At that session, the CLCS adopted its recommendations in regard to the submission made by Norway in the North East Atlantic and the Arctic, by Mexico in respect of the Western Polygon in the Gulf of Mexico, as well as its recommendations in regard to the joint submission made by France, Ireland, Spain and the United Kingdom in the area of the Celtic Sea and the Bay of Biscay.

At the twenty-fourth session, formal presentations of submissions were made in the plenary by Suriname, Myanmar, the United Kingdom in respect of Hatton Rockall Area, Ireland in respect of Hatton Rockall Area, Uruguay, the Philippines in the Benham Rise region, the Cook Islands in respect of the Manihiki Plateau, Fiji, Argentina, Ghana, Denmark in the area North of the Faroe Islands, Kenya, Mauritius in the region of Rodrigues Island, Viet Nam in respect of the North Area (VNM-N), Nigeria, Seychelles concerning the Northern Plateau Region, Côte d'Ivoire, as well as the joint submission made by Malaysia and Viet Nam in respect of the Southern part of the South China Sea. It also adopted its recommendations in regard to the submission made by France in respect of the areas of French Guiana and New Caledonia.

In 2009, the workload of the Commission increased significantly in view of the expiration in May 2009 of the time-period for the making of submissions as set out in article 4 of annex II to the Convention and in accordance with the decision of the eleventh Meeting of States Parties (SPLOS/72), reaching a total number of 51 submissions. Thus, in addition to the submissions in respect of which formal presentations were made, submissions were also received from France in respect of areas of the French Antilles and the Kerguelen Islands, Yemen in respect of South East of Socotra Island, Iceland in the Ægir Basin area and in the Western and Southern parts of Reykjanes Ridge, Pakistan, Norway in respect of Bouvetøya and Dronning Maud Land, South Africa in respect of the mainland of the territory of the Republic of South Africa, France in respect of La Réunion Island and Saint-Paul and Amsterdam Islands, Palau, Sri Lanka, Portugal, the United Kingdom "in respect of the Falkland Islands,[294] and of South Georgia and the South Sandwich Islands",[295] Tonga, Spain in respect of the area of Galicia, by India, Trinidad and Tobago, Namibia and by Cuba, as well as the joint submission made by the Federated States of Micronesia, Papua New

[293] For more information on the twenty-third and twenty-fourth sessions of the CLCS see A/64/66/Add.1, chapter III, section D, as well as CLCS/62 and CLCS/64.

[294] Note by the Secretariat: a dispute exists between the Governments of Argentina and the United Kingdom of Great Britain and Northern Ireland concerning sovereignty over the Falkland Islands (Malvinas).

[295] See the title of the executive summary of the submission by the United Kingdom, available at http://www.un.org/Depts/los/clcs_new/clcs_home.htm.

Guinea and Solomon Islands concerning the Ontong Java Plateau and the joint submission made by France and South Africa in the area of the Crozet Archipelago and the Prince Edward Islands. Formal presentations in respect of these submissions were deferred by the concerned States to a future session of the Commission to be determined.

In addition, pursuant to the decision taken at the eighteenth Meeting of States Parties (SPLOS/183), the following coastal States transmitted preliminary information to the Secretary-General, indicative of the outer limits of their continental shelf beyond 200 nautical miles: Angola, Bahamas, Benin, Brunei Darussalam, Cameroon, Cape Verde, Chile, China, Comoros, Congo, Costa Rica, Democratic Republic of the Congo, Equatorial Guinea, Fiji, France in respect of Polynésie française, Wallis and Futuna, France in respect of Saint-Pierre-et-Miquelon, Gabon, Gambia, Guinea, Guinea-Bissau, Guyana, Mauritania, Mauritius in respect of the Chagos Archipelago, Mexico in respect of of the Eastern Polygon in the Gulf of Mexico, Micronesia (Federated States of), Mozambique, New Zealand, in respect of Tokelau, Oman, Papua New Guinea, Republic of Korea, Sao Tome and Principe, Senegal, Seychelles in respect of the Aldabra Island Region, Sierra Leone, Solomon Islands, Somalia, Spain in respect of West of Canary Islands, Togo, the United Republic of Tanzania, Vanuatu, and jointly from Benin and Togo, from Fiji and Solomon Islands as well as from Fiji, Solomon Islands and Vanuatu.

The nineteenth Meeting of States Parties, held in June 2009, addressed the issue of the workload of the Commission. Following deliberations, the Meeting adopted an agreed outcome in which it requested "the Secretariat to prepare an update of the note contained in document SPLOS/157, on the basis of the discussions at the nineteenth Meeting of States Parties and any further information provided by States parties and observers, and in due time before the next Meeting, to facilitate a comprehensive review by States parties".[296] It also decided that "the bureau of the nineteenth Meeting of States Parties [would] facilitate an informal working group to continue consideration of the issues related to the workload of the Commission".[297] The informal Working Group started its work in 2009. In addition, the Bureau of the nineteenth Meeting of States Parties met with the members of the Commission on 1 September 2009, during its twenty-fourth session, to discuss the difficulties the Commission faced in dealing with its increased workload.[298]

The comprehensive Secretary-General's report also provided an overview with regard to a number of other ocean issues, including international shipping activities;[299] people at sea;[300] maritime security;[301] marine science and technology;[302] conservation and manage-

[296] SPLOS/203, paragraph 95 (4). The update to document SPLOS/157 will be contained in document SPLOS/208, which, at the time of preparation of this Yearbook, was not yet published.

[297] SPLOS/203, paragraph 95 (4).

[298] For more details see CLCS/64, paragraph 125. The presentation delivered to the Bureau on 1 September 2009 is available online at: http://www.un.org/Depts/los/clcs_new/presentation_to_bureau_msp_2009.pdf .

[299] A/64/66/Add.1, chapter V. See also section 4 of chapter IIIB of the present publication, concerning the activities of the International Maritime Organization.

[300] *Ibid.*

[301] A/64/66/Add.1, chapter VII.

[302] A/64/66/Add.1, chapter VIII.

ment of marine living resources;[303] marine biological diversity;[304] protection and preservation of the marine environment and sustainable development;[305] climate change and oceans;[306] international cooperation and coordination,[307] including progress regarding the "assessment of assessments"[308] 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, Office of Legal Affairs, United Nations (the Division).[309]

In addition, the Secretary-General's report contained information on the settlement of disputes relating to law of the sea matters by the International Tribunal for the Law of the Sea (ITLOS)[310] and the International Court of Justice (ICJ).[311]

With regard to maritime security, the report provided an overview of legal developments relating to piracy and armed robbery against ships worldwide, including actions being taken to combat it. Particular attention was given to piracy and armed robbery off the coast of Somalia, as it continued to be a serious problem threatening the safety and security of international navigation, the lives and livelihoods of seafarers and the security situation in the Horn of Africa.[312] IMO adopted a series of documents, which provided guidance on how to prevent, prepare for, and react to, incidents of piracy and armed robbery against ships. Within the regional context, the Djibouti Code of Conduct concerning the Repression of Piracy and Armed Robbery against Ships in the Western Indian Ocean and the Gulf of Aden, which is a non-binding cooperative mechanism for States in this region, was concluded under IMO auspices on 29 January 2009.[313] Also concerning the situation off the coast of Somalia, the anti-piracy programme of the United Nations Office on Drugs and Crime focused on providing assistance in States in the region to enable them to undertake piracy prosecutions to ensure that the trials of suspects are effective, efficient and fair.[314]

---

[303] A/64/66/Add.1, chapter IX.

[304] A/64/66/Add.1, chapter X; A/64/66/Add.2. See also, for information on the environment, section 8 of this chapter; and for information on the activities of the World Intellectual Property Organization, section 8 of chapter IIIB, of the present publication.

[305] A/64/66/Add.1, chapter IX; see also section 8 of the present chapter on the environment.

[306] A/64/66/Add.1, chapter XII; see also section 8 of the present chapter on the environment.

[307] A/64/66/Add.1, chapter XIV.

[308] A/64/65/Add.1, chapter XIV.B.

[309] A/64/66/Add.1, chapter XV.

[310] A/64/66/Add.1, Chapter X, section B. For further information on the work of ITLOS, see chapter VII of the present publication.

[311] A/64/66/Add.1, Chapter X, section A. For further information on the work of the ICJ, see chapter VII of the present publication.

[312] For an overview of some of the activities undertaken to combat piracy off the coast of Somalia in 2009, see Report of the Secretary-General pursuant to Security Council resolution 1846 (2008), S/2009/590.

[313] See Secretary-General's report on Oceans and the Law of the Sea A/64/66/Add.1 and http://www.imo.org. For further information on piracy, see section 2 (j) of the present chapter.

[314] http://www.unodc.org.

With regard to marine science, the Secretary-General reported on the revision of "Marine Scientific Research: a Guide to the Implementation of the Relevant Provisions of the United Nations Convention on the Law of the Sea", published in 1991. The Division revised the Guide with the assistance of a Group of Experts, which met in April 2009. The revised Guide focuses on the implementation of the Convention's core provisions on marine scientific research, particularly on those concerning the consent procedure. Part I of the revised Guide addresses the provisions of the Convention on marine scientific research. Part II provides information on State practice and on challenges facing developing coastal States, in particular. Part III identifies some best practices and provides practical guidance for the implementation of the relevant provisions of the Convention. The annexes include standard forms to facilitate the process of granting consent for marine scientific research projects.[315]

With respect to marine biological diversity, the Secretary-General published an addendum[316] to his report to assist 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 preparing the agenda of its third meeting, to be convened in 2010. The report contains information on activities undertaken by relevant organizations since the last report of the Secretary-General on the matter,[317] including an overview of the legal aspects of this issue. It also provides information on possible options and approaches to promote international cooperation and coordination, and identifies key issues and questions for which more detailed background studies would facilitate consideration by States.

Another Secretary-General's report to the sixty-fourth session of the General Assembly focused on the "Implementation of the outcomes of the Consultative Process, including a review of its achievements and shortcomings in the first nine meetings",[318] the topic chosen for the tenth meeting of the United Nations Open-ended Informal Consultative Process on Oceans and the Law of the Sea. It provided, *inter alia*, information on the establishment of the Informal Consultative Process and an overview of its functioning, including a summary of the outcomes of its meetings. It also reviewed how those outcomes have generally been incorporated in the relevant General Assembly resolutions and what subsequent major actions have been taken and summarized the views that have been expressed on the achievements and shortcomings of the Informal Consultative Process at its meetings and in the contributions that were made to the report. The tenth meeting was held in New York in June 2009.[319]

[315] A/64/66/Add.1, paragraph 151.

[316] A/64/66/Add.2.

[317] A/62/66/Add.2.

[318] A/64/66.

[319] A/64/131. See also A/64/66/Add. 1, chapter XIV.

In his report to the General Assembly on sustainable fisheries,[320] the Secretary-General provided an overview of actions taken by States and regional fisheries management organizations and arrangements (RFMO/As) to give effect to paragraphs 83 to 90 of General Assembly resolution 61/105 on sustainable fisheries, including through the United Nations Fish Stocks Agreement (the Agreement). The report described the most vulnerable marine ecosystems and the impacts of bottom fishing on those ecosystems, and outlined actions taken by States and RFMO/As to adopt and implement measures aimed at regulating bottom fisheries and protecting vulnerable marine ecosystems from destructive fishing practices. It also described recent initiatives by States to establish new RFMO/As in the north-west and south Pacific with the competence to regulate bottom fisheries, and interim measures adopted by these States pending the establishment of such organizations or arrangements. It concluded that the international community had responded to the call for action contained in General Assembly resolution 61/105 and had adopted a wide range of measures to address the impacts of bottom fishing on vulnerable marine ecosystems. Despite progress, the implementation of the resolution had been uneven and further efforts were needed in the adoption and implementation of conservation and management measures. The report highlighted the importance of support tools, including a global database on vulnerable marine ecosystems, and the need to increase cooperation and coordination on data collection and sharing, and for capacity-building and transfer of appropriate technology to developing States to ensure their participation in deep sea fisheries and the protection of vulnerable marine ecosystems.

In addition to issues concerning the conservation and management of marine fishery resources,[321] the Secretary-General reported on the work of the eighth round of Informal Consultations of States Parties to the Agreement, which was held in New York, in March 2009, in accordance with paragraph 33 of General Assembly resolution 63/112 of 5 December 2008.[322] The Informal Consultations were held to consider, *inter alia*, promoting a wider participation in the Agreement through a continuing dialogue, in particular with developing States, and initial preparatory work for the resumption of the Review Conference on the Agreement. The continuing dialogue addressed: promoting a wider participation in the Agreement; the relationship between the Agreement and the Convention, as well as other international instruments; capacity-building; compatibility of conservation and management measures; and cooperation in enforcement and port State measures. The

[320] The report of the Secretary-General, entitled "Actions taken by States and regional fisheries management organizations and arrangements to give effect to paragraphs 83 to 90 of General Assembly resolution 61/105 on 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" (A/64/305), was a follow-up to the report of the Secretary-General, entitled "Impacts of fishing on vulnerable marine ecosystems: actions taken by States and regional fisheries management organizations and arrangements to give effect to paragraphs 66 to 69 of the General Assembly resolution 59/25 on sustainable fisheries, regarding the impacts of fishing on vulnerable marine ecosystems" (A/61/154). See also the interim reports of the Secretary-General on measures taken by States and RFMO/As to implement resolution 61/105 (A/62/260, paragraphs 60–96, and A/63/128, paragraphs 63–78).

[321] A/64/66/Add.1, chapter IX.A.

[322] A/64/66/Add.1, chapter II.C.

continuing dialogue initiated an important process to increase participation in the Agreement that will continue in other forums.[323]

As regards the initial preparatory work for the resumed Review Conference, the Informal Consultations agreed to recommend, in accordance with the agreed timeline and programme of work, that the General Assembly should request the Secretary-General to: (a) convene a ninth round of Informal Consultations of States Parties to the Agreement for a duration of two days to serve primarily as a preparatory meeting for the resumed Review Conference; and (b) prepare, in cooperation with the Food and Agriculture Organization of the United Nations, the updated comprehensive report referred to in paragraph 32 of General Assembly resolution 63/112, taking into account the specific guidance proposed by the eighth round of Informal Consultations of States Parties to the Agreement, and make available an advance unedited version of the report, in accordance with past practice, on the website of the Division.[324]

(*b*) Consideration by the General Assembly

(i) *Oceans and law of the sea*

The General Assembly considered the agenda item "Oceans and the law of the sea" on 4 December 2009. It had before it the following documents: report of the Secretary-General on oceans and the law of the sea;[325] Regular process for global reporting and assessment of the state of the marine environment, including socio-economic aspects: the "assessment of assessments": letter dated 11 May 2009 from the Intergovernmental Oceanographic Commission of the United Nations Educational, Scientific and Cultural Organization and the United Nations Environment Programme addressed to the Secretary-General;[326] report on the work of the United Nations Open-ended Informal Consultative Process on Oceans and the Law of the Sea at its 10th meeting: letter dated 10 July 2009 from the Co-Chairpersons of the Consultative Process addressed to the President of the General Assembly;[327] report on the work of the *Ad Hoc* Working Group of the Whole to Recommend a Course of Action to the General Assembly on the Regular Process for Global Reporting and Assessment of the State of the Marine Environment, including Socio-Economic Aspects: letter dated 10 September 2009 from the Co-Chairs of the *Ad Hoc* Working Group of the Whole addressed to the President of the General Assembly;[328] and letter dated 10 December 2010 from the Permanent Representative of the Islamic Republic of Iran to the United Nations addressed to

[323] The report of the eighth round of Informal Consultations of States Parties to the Agreement is available on the website of the Division at: http://www.un.org/Depts/los/index.htm .

[324] The ninth round of Informal Consultations of States Parties to the Agreement was held at United Nations Headquarters in New York in March 2010. For the updated comprehensive report of the Secretary-General to the resumed Review Conference on the Agreement, see A/CONF.210/2010/1.

[325] A/64/66, A64/66/Add.1 and Add.2.

[326] A/64/88.

[327] A/64/131.

[328] A/64/347.

the Secretary-General.[329] On 4 December 2009, the General Assembly, without reference to a Main Committee, adopted resolution 64/71[330] entitled "Oceans and the law of the sea".

The resolution was divided into 17 sections and covered a wide range of ocean issues, such as the implementation of the Convention and related agreements and instruments; capacity-building; the Meeting of States Parties; peaceful settlement of disputes; the Area; effective functioning of the ISA and the ITLOS; the continental shelf and the work of the CLCS; 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.

(ii) *Sustainable fisheries*

The General Assembly considered the agenda item "Oceans and the law of the sea: 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" on 4 December 2009. It had before it the report of the Secretary-General on actions taken by States and regional fisheries management organizations and arrangements to give effect to paragraphs 83 to 90 of General Assembly resolution 61/105 on 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.[331] On 4 December 2009, the General Assembly, without reference to a Main Committee, adopted resolution 64/72 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 was adopted without a vote.

The resolution was divided into 13 sections and addressed a number of issues, including measures to achieve sustainable fisheries; implementation of the United Nations Fish Stocks Agreement; implementation of related fisheries instruments; illegal, unreported and unregulated fishing; monitoring, control and surveillance and compliance and enforcement; fishing overcapacity; large-scale pelagic drift-net fishing; fisheries by-catch and discards; subregional and regional cooperation; responsible fisheries in the marine ecosystem; capacity-building; and cooperation within the United Nations system.

[329] A/64/569.

[330] The resolution was adopted by a recorded vote of 120 votes to 1, with 3 abstentions.

[331] A/64/305.

10. Crime prevention and criminal justice[332]

(*a*) Conference of the States Parties to the United Nations Convention against Corruption

The Conference of the States Parties to the United Nations Convention against Corruption[333] was established pursuant to article 63 of the Convention to improve the capacity of and cooperation between States Parties to the Convention, with a view to achieving the Convention's objectives and to promoting and reviewing its implementation. The third session of the Conference was held in Doha, Quatar, from 9 to 13 November 2009.[334] During this session, three resolutions were adopted, relating to the timing of the Conference's review cycle, preventative measures, asset recovery and technical assistance for the implementation of the Convention.[335]

(*b*) 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, covering 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 regular and reconvened eighteenth session of the Commission on Crime Prevention and Criminal Justice were held in Vienna from 16 to 24 April 2009 and 3 to 4 December 2009 respectively. In its annual report,[336] CCPCJ brought to the attention of the Economic and Social Council a number of resolutions, including resolution 18/1 entitled "Supplementary rules specific to the treatment of women in detention and in custodial and non-custodial settings", resolution 18/2 entitled "Civilian private security services: their role, oversight and contribution to crime prevention and community safety", and

[332] 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 www.unodc.org.

[333] United Nations, *Treaty Series,* vol. 2349, p. 41.

[334] Report of the Conference of the State Parties to the United Nations Convention against Corruption on its third session, held in Doha from 9 to 13 November 2009, (CAC/COSP/2009/15).

[335] See Report of the Conference of the State Parties to the United Nations Convention against Corruption on its third session, held in Doha from 9 to 13 November 2009, (CAC/COSP/2009/15), resolution 3/1; resolution 3/2; resolution 3/3; and resolution 3/4. See also decision 3/1, entitled "Venues for the fourth and fifth sessions of the Conference of the State Parties to the United Nations Convention against Corruption".

[336] For the report on the seventeenth session of CCPCJ, see E/CN.15/2008/22.

resolution 18/3 entitled "Improving the governance and financial situation of the United Nations Office on Drugs and Crime". In resolution 18/1, the Commission urged Member States that have developed legislation, procedures, policies or practices regarding women in detention and in custodial and non-custodial settings to make available information on those initiatives to other States. It also requested that the UNODC provide technical assistance and advisory services to support Member States in developing legislation, procedures, policies and practices for women in prison and on alternatives to imprisonment for women offenders. In resolution 18/2, the Commission invited Governments to determine whether national legislation provides adequate oversight of the role played by civilian private security services, and decided to establish an *ad hoc* open-ended intergovernmental expert group to study the role of civilian private security services and their contribution to crime prevention and community safety. In resolution 18/3, the Committee adopted the recommendations of the open-ended intergovernmental group on improving the governance and financial situation of the United Nations Office on Drugs and Crime, and decided to establish a standing open-ended intergovernmental working group on governance and finances, which will have a mandate until the Commission's session in early 2011.

(*c*) Economic and Social Council

On 30 July 2009, following the submission by the Commission on Crime Prevention and Criminal Justice of draft resolutions on this item, the Economic and Social Council adopted five resolutions which are highlighted below.

In resolution 2009/22, entitled "International cooperation in the prevention, investigation, prosecution and punishment of economic fraud and identity related-crime", the Council encouraged Member States, *inter alia*, to strengthen international cooperation to prevent and combat economic fraud and identity-related crime, in particular by making full use of relevant international law instruments. It also called upon States to develop and maintain adequate law enforcement and investigative capacity to keep abreast of and deal with new developments in the exploitation of information, communications and commercial technologies in economic and identity-related fraud.

In resolution 2009/23, entitled "Support for the development and implementation of the regional programmes of the United Nations Office on Drugs and Crime", the Council invited all Member States, as well as subregional and regional institutions, to mainstream measures to counter organized crime, corruption and illicit drug trafficking, and to make every effort to allocate resources for the implementation of those measures, in accordance with relevant international conventions. It also encouraged bilateral and multilateral aid agencies, as well as financial institutions, to support the implementation of the regional programmes of the United Nations Office on Drugs and Crime.

The Council also adopted resolution 2009/24, entitled "International cooperation to prevent, combat and eliminate kidnapping and to provide assistance to victims of kidnapping". In this resolution, the Council vigourously condemned and rejected the crime of kidnapping under any circumstance and for any purpose. It encouraged Member States to continue to foster international cooperation, especially extradition, mutual legal assistance, collaboration between law enforcement agencies and the exchange and joint analysis of information. It also encouraged Member States to take measures intended to provide

adequate assistance and protection to victims of kidnapping and their families, including measures addressing their rights and legal interests. In addition, it requested Member States, *inter alia*, to provide training for judges, judicial officials, prosecutors and law enforcement officials to promote their understanding of processes and mechanisms available for disbanding criminal organizations.

In resolution 2009/25, entitled "Improving the collection, reporting and analysis of data to enhance knowledge on trends in specific areas of crime", the Council invited Member States to strengthen their efforts to review and improve data collection tools in order to obtain an objective, scientific, balanced and transparent assessment of emerging trends in specific areas of crime. It further invited Member States to share information on the progress made and obstacles encountered in fostering the exchange among States of information related to crime and to the function of the criminal justice system.

The Council also adopted resolution 2009/26 entitled "Supporting national and international efforts for child justice reform, in particular through improved coordination in technical assistance". In this resolution, the Council urged Member States to pay particular attention to the issue of child justice, and, in this respect, to take into account relevant international instruments, United Nations standards and norms for the treatment of children in conflict with the law. It also invited Member States to adopt a comprehensive approach to child justice reform, including through policy and legal reform; the establishment of data collection and information management systems; the strengthening of institutional capacity, including with regard to social workers and providers of legal assistance; awareness-building and monitoring; and the establishment of child-sensitive procedures and institutions.

(d) General Assembly

On 18 December 2009, the General Assembly adopted, on the recommendation of the Third Committee,[337] four resolutions under this agenda item, of which three are highlighted below.[338]

In resolution 64/178 entitled "Improving the coordination of efforts against trafficking in persons", the Assembly urged all States that had not yet done so to consider taking measures to ratify or accede to the United Nations Convention against Transnational Organized Crime[339] and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children,[340] as well as the Optional Protocol to the Convention on the Rights of the Child,[341] the Convention on the Elimination of All Forms of Discrimination Against Women,[342] and the Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery.[343] It called upon Governments to continue their efforts to criminalize trafficking of persons in all its forms, and

[337] For the report of the Third Committee, see A/63/431.

[338] The General Assembly also adopted resolution 64/181 of 18 December 2009 entitled "United Nations African Institute for the Prevention of Crime and the Treatment of Offenders".

[339] General Assembly resolution 55/25 of 15 November 2000.

[340] United Nations document, A/55/383-General Assembly resolution 55/25 of 15 November 2000.

[341] United Nations, *Treaty Series*, vol. 2171, p.247.

[342] United Nations, *Treaty Series*, vol. 1249, p.13.

[343] United Nations, *Treaty Series*, vol. 266, No. 3822.

encouraged all stakeholders to strengthen coordination of efforts in this respect, including through the Inter-Agency Coordination Group against Trafficking in Persons, as well as bilateral and regional initiatives that promote cooperation and collaboration.

On the same day, the General Assembly adopted resolution 64/179 entitled "Strengthening the United Nations Crime Prevention and Criminal Justice Programme, in particular its technical cooperation capacity". In this resolution, the Assembly reaffirmed the importance of the United Nations Convention against Transnational Organized Crime[344] and its Protocols[345] as the main tools of the international community to fight transnational organized crime. It called upon Member States to strengthen their efforts in international cooperation with regard to crime prevention and criminal justice, and requested that the United Nations Office on Drugs and Crime continue to provide technical assistance to States, with a view to fostering international cooperation, in particular mutual legal assistance.

The General Assembly also adopted resolution 64/180 entitled "Preparations for the Twelfth United Nations Congress on Crime Prevention and Criminal Justice". In this resolution, the Assembly encouraged Governments to make preparations for the Twelfth United Nations Congress on Crime Prevention and Criminal Justice at an early stage by all appropriate means. It called upon the Twelfth Congress to formulate concrete proposals for further follow-up and action, paying particular attention to practical arrangements relating to the effective implementation of the international legal instruments pertaining to transnational organized crime, terrorism and corruption and technical assistance activities related to them.

11. International drug control

(*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. The Commission convenes ministerial-level segments of its sessions to focus on specific themes. During its fifty-second session,[346] held in Vienna from 11 to 20 March 2009, the Commission held a thematic debate on "tools for enhancing the effectiveness of international drug control and international cooperation in the fight against illicit drugs,

[344] General Assembly resolution 55/25 of 15 November 2000.

[345] Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, 15 November 2000, General Assembly resolution 55/25 of 15 November 2000, annex III; and Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, 15 November 2000, General Assembly resolution 55/25 of 15 November 2000.

[346] Report of the fifty-second session of the Commission on Narcotic Drugs, 14 March 2008 and 11–20 March 2009 (E/2009/28 E/CN.7/2009/12).

specifically: data collection for effective drug control, including on the misuse of cyberspace; and strengthening of regional and cross-border cooperation, including data-sharing". The Commission also held a reconvened fifty-second session, which was held from 1 to 2 December 2009.

Thirteen resolutions[347] were adopted by the Commission and brought to the attention of the Economic and Social Council, of which four are highlighted below.

In resolution 52/1, entitled "Promoting international cooperation in addressing the involvement of women and girls in drug trafficking, especially as couriers", the Commission devoted particular attention to the role of women and girls in drug trafficking, and to the worrying trend of illicit drugs use. It urged, *inter alia*, Member States to implement broad-based programmes aimed at preventing women and girls from being used as couriers for trafficking in drugs, and encouraged them to consider establishing programmes of assistance to support income-generating projects for the educational, economic and social development and rehabilitation of women and girls involved in drug trafficking.

By resolution 52/2, entitled "Strengthening the law enforcement capacity of the transit States neighbouring Afghanistan, based on the principle of shared responsibility", the Commission requested, *inter alia*, the international community to provide, on the basis of the principle of shared responsibility, urgent technical assistance and support to States neighbouring Afghanistan that are most affected by the transit of illicit drugs. The Commission urged Member States and the United Nations Office on Drugs and Crime (UNODC) to organize training seminars and workshops for relevant law enforcement agencies in Afghanistan and neighbouring States to assist them in strengthening their capacity to respond to drug-related threats. Relevant international organizations, financial institutions and donors were also urged to provide technical and financial assistance to States neighbouring Afghanistan, including by building and promoting human resource capacity in those States, and by providing relevant technical equipment and facilities to support those States in combating drug trafficking more effectively.

In resolution 52/4, entitled "Strengthening international support for States in West Africa in their efforts to combat drug trafficking", the Commission, *inter alia*, called upon Member States, especially the main countries of origin, transit and destination of illicit drugs smuggled through West Africa, to strengthen their efforts to reduce the supply of, trafficking in and demand for illicit drugs, in conformity with relevant provisions of international drug control treaties.

By resolution 52/9, entitled "Strengthening measures against the laundering of assets derived from drug trafficking and related offences", States parties to the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988[348] were called upon to apply fully the provisions of that Convention. Member States were invited to ensure that banking secrecy laws do not impede criminal investigations into the laundering of assets derived from drug trafficking and related offences; enhance effective international judicial cooperation in detecting and prosecuting those involved in money-

[347] For a complete list of the resolutions, see E/2009/28 E/CN.7/2009/12. See also resolution 52/14 entitled "Budget for the biennium 2010–2011 for the Fund of the United Nations International Drug Control Programme", adopted at the reconvened fifty-second session of the Commission on Narcotic Drugs, 1–2 December 2009 (E/2009/28/Add.1 E/CN.7/2009/12/Add.1).

[348] United Nations, *Treaty Series*, vol. 1582, p. 164.

laundering, and in developing witness protection programmes; and establish procedures for determining legal ownership of assets proved to be of illegal origin.

(*b*) Economic and Social Council

On 30 July 2009, the Economic and Social Council adopted, on the recommendation of the Commission on Narcotic Drugs, resolution 2009/23 entitled "Support for the development and implementation of the regional programmes of the United Nations Office on Drugs and Crime".[349] In this resolution, the Council, *inter alia*, welcomed the adoption by the UNODC and Crime of a regional approach for programming based on consultation and partnership at the national and regional levels. It encouraged Member States to draw, where appropriate, upon the regional programmes of the UNODC, and the technical assistance activities outlined in them in the development of national legislation, procedures, policies and strategies to strengthen criminal justice systems and related institutions. The Council also invited all Member States, as well as regional and subregional institutions, to mainstream measures to counter organized crime, corruption and illicit drug trafficking in their national and regional development strategies, in accordance with the relevant international conventions.

On the same day, the Council also adopted resolution 2009/22 entitled "International cooperation in the prevention, investigation, persecution and punishment of economic fraud and identity-related crime". In this resolution, the Council took note of the report of the Secretary-General on international cooperation in the prevention, investigation, persecution and punishment of economic fraud and identity-related crime.[350] It encouraged Member States to, *inter alia*, ensure that they have adequate investigative powers to combat economic fraud and identity-related crime, and to review and update relevant laws in this respect. It also encouraged Member States to develop and maintain adequate law enforcement and investigative capacity, in order to keep abreast of new developments in the exploitation of information, communications and commercial technologies in economic fraud and identity-related crime; to consider the establishment of new offences in their jurisdictions, in response to the evolution of economic fraud and identity-related crime; and to make full use of relevant international legal instruments to strengthen international cooperation, with a view to preventing and combating economic fraud and identity-related crime.

(*c*) General Assembly

On 18 December 2009, the General Assembly adopted, on the recommendation of the Third Committee, resolution 64/182 entitled "International cooperation against the world drug problem". In this resolution, the General Assembly undertook, *inter alia*, to promote bilateral, regional and international cooperation, including through intelligence-sharing and cross-border cooperation, with a view to countering the world drug problem

[349] See also decision 2009/248 entitled "Report of the Commission on Narcotic Drugs on its fifty-second session and provisional agenda and documentation for the fifty-third session of the Commission" and decision 2009/249 entitled "Report of the International Narcotics Control Board".

[350] Report of the Secretary-General, "International cooperation in the prevention, investigation, persecution and punishment of economic fraud and identity-related crime" (E/CN.15/2009/2).

more effectively. In particular, it sought to encourage and support cooperation by States most directly affected by illicit crop cultivation and the illicit production, manufacture, transit, distribution and abuse of narcotic drugs and psychotropic substances. The Assembly highlighted the increasing link between drug trafficking, corruption and other forms of organized crime, and stressed the need to address the significant challenges faced by law enforcement and judicial authorities in responding to the ever-changing means used by transnational criminal organizations to avoid detection and prosecution. Further, it urged States that had not yet done so to ratify, accede to or implement all provisions of the Single Convention on Narcotic Drugs of 1961 as amended by the Protocol of 1972,[351] the Convention on Psychotropic Substances of 1971,[352] the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988,[353] the United Nations Convention against Transnational Organized Crime and its protocols,[354] and the Convention against Corruption.[355] It also urged all Member States to implement the Action Plan for the Implementation of the Declaration on the Guiding Principles of Drug Demand Reduction,[356] and to strengthen their national efforts to counter the abuse of illicit drugs in their populations, in particular among children and young people.

12. Refugees and displaced persons[357]

(*a*) Executive Committee of the Programme of the United Nations High Commissioner for Refugees[358]

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, reporting to it through the Third Committee. The Executive Committee meets annually in Geneva to review and approve the programmes and budget of the UNHCR and its intergovernmental and non-governmental partners. The sixtieth plenary session of the Executive Committee was held in Geneva from 28 September to 2 October 2009.[359]

During its sixtieth plenary session, the Executive Committee adopted one conclusion, in which it concluded that a consensus on the text of a draft conclusion on protracted refugee situations had not been reached between States at the time of the plenary session. The

[351] United Nations, *Treaty Series*, vol. 976, p. 105.

[352] *Ibid*., vol. 1019, p. 175.

[353] *Ibid*., vol. 1582, p. 95.

[354] *Ibid*., vol. 2225, p. 209; *Ibid*., vol. 2237, p. 304; *Ibid*., vol. 2326, p. 209; and *Ibid*., vol. 2241, p. 478.

[355] United Nations, *Treaty Series*, vol. 2349, p. 41.

[356] General Assembly resolution 54/132 of 17 December 1999, annex.

[357] For complete lists of signatories and State parties to international instruments relating to refugees that are deposited with the Secretary-General, see *Multilateral Treaties Deposited with the Secretary-General*, *Status as at 31 December 2009,* available at http://treaties.un.org/Pages/Home.aspx?lang=en.

[358] For detailed information and documents regarding this topic generally, see the website of the UNHCR at http://www.unhcr.org.

[359] For the report of the sixtieth session of the Executive Committee, see *Official Records of the General Assembly, Sixtieth Session, Supplement No. 12A* (A/64/12/Add.1).

Executive Committee noted, however, that negotiations would be pursued between States so that a conclusion may later be adopted.

At an extraordinary meeting convened on 8 December 2009, the Executive Committee adopted a "Conclusion on Protracted Refugee Situations". In its conclusion, the Executive Committee welcomed initiatives taken by the UNHCR to maximize opportunities and find comprehensive solutions to existing protracted refugee situations, including the convening of a High Commissioner's Dialogue on Protection Challenges in 2008 on the specific topic of protracted refugee situations. It expressed deep concern about refugees in "protracted refugee situations" for five years or more after their initial displacement, without immediate prospects for implementation of durable solutions, and noted the detrimental effects of long-lasting and intractable exile on the physical, mental, social, cultural and economic well-being of refugees.

In the same conclusion, the Executive Committee recognized that local integration is a sovereign option for States to exercise, and that protracted refugee situations impose considerable burdens for host States, which are themselves often developing, in transition, or with limited resources and facing other constraints. In this regard, the Executive Committee affirmed that support should be provided for addressing the problems and needs of host States which face additional difficulties and suffer negative consequences to their local environment and natural resources. Nevertheless, the Executive Committee acknowledged that protracted refugee situations can increase the risks to which refugees may be exposed, and that at present, there is a particular need to give attention to those refugees most affected by global financial and economic crises.

The Executive Committee also recalled in this conclusion the need for countries of origin to undertake all possible measures to prevent refugee situations, particularly those that can become protracted; to address their root causes; and to promote and facilitate refugees' voluntary return home from exile and their sustainable reintegration in safety, dignity and social and economic security. It also recognized that in principle, all refugees should have the right to have restored to them or be compensated for any housing, land or property of which they were deprived in an illegal, discriminatory or arbitrary manner before or during exile. To this end, the Executive Committee noted the potential need for fair and effective restitution mechanisms.

With regard to strategic action to be taken by States, the Executive Committee noted, in the same conclusion, that all feasible and practical efforts should be taken to unlock all continuing protracted situations, especially through the implementation of durable solutions, in the spirit of international solidarity and burden sharing. The Executive Committee reiterated that voluntary repatriation remains the preferred durable solution of refugee situations, but that some situations may require tailoring, sequencing and phasing, while others will require simultaneous application of different solutions. It noted that attention will need to be given to additional legal, protection, health, social and economic problems that arise in all refugee situations, and that States' domestic laws could offer more protection, as appropriate, than outlined in the 1951 Convention Relating to the Status of Refugee.[360]

[360] United Nations, *Treaty Series*, vol. 189, p. 137.

The Executive Committee encouraged both States and UNHCR to actively pursue the strategic and increased use of resettlement, and recalled the need for countries of origin to undertake all possible measures to prevent refugee situations, particularly those that may become protracted. Further, the Executive Committee urged States to continue pursuing proactive measures with a view to reducing dependency and promoting self-sufficiency of refugees, and to pursue active and effective partnerships with humanitarian and development partners to implement durable solutions, and the objectives of the Delivering as One initiative.

(*b*) United Nations Economic and Social Council

On 30 July 2009, the United Nations Economic and Social Council adopted decision 2009/252, 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-fourth session, decide on the question of enlarging the membership of the Executive Committee from seventy-eight to seventy-nine States.

(*c*) General Assembly

On 18 December 2009, the General Assembly adopted, on the recommendation of the Third Committee, resolution 64/128, entitled "Enlargement of the Executive Committee of the Programme of the United Nations High Commissioner for Refugees".[361] In this resolution, 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-eight to seventy-nine States, and requested the Economic and Social Council to elect the additional member at its resumed organizational session in 2010.

On the same day, the General Assembly adopted, also on the recommendation of the Third Committee, resolution 64/129, entitled "Assistance to refugees, returnees and displaced persons in Africa", in which the Assembly, *inter alia*, condemned all acts posing a threat to the well-being of refugees and asylum-seekers, as well as those threatening the security of staff in the Office of the High Commissioner and humanitarian organizations. The Assembly also called upon the international community to intensify their support for African governments through appropriate capacity-building activities, and recognized that although voluntary repatriation is the pre-eminent solution, local integration and third-country resettlement are also viable options in the context of African refugees unable to return home.

[361] For other resolutions dealing with refugees, see resolution 64/127, entitled "Office of the United Nations High Commissioner for Refugees" adopted on the same date; resolution 64/87, entitled "Assistance to Palestine refugees" adopted on 10 December 2009; resolution 64/89, entitled "Operations of the United Nations Relief and Works Agency for Palestine refugees in the Near East" adopted on 10 December 2009; and resolution 64/90, entitled "Palestine refugees' properties and their revenues" adopted on 10 December 2009.

13. International Court of Justice[362]

(*a*) Organization of the Court

On 6 February 2009, Judge Hisashi Owada (Japan) was elected President of the International Court of Justice, and Judge Peter Tomka (Slovakia) was elected Vice-President.

At the end of 2009, the composition of the Court was as follows:

President: Hisashi Owada (Japan);

Vice-President: Peter Tomka (Slovakia);

Judges: Shi Jiuyong (China), Abdul G. Koroma (Sierra Leone), Awn Shawkat Al-Khasawneh (Jordan), Thomas Buergenthal (United States of America), Bruno Simma (Germany), Ronny Abraham (France), Kenneth Keith (New Zealand), Bernardo Sepúlveda-Amor (Mexico), Mohamed Bennouna (Morocco), Leonid Skotnikov (Russian Federation), Antônio A. Cançado Trindade (Brazil), Abdulqawi Ahmed Yusuf (Somalia), and Christopher Greenwood (United Kingdom of Great Britain and Northern Ireland).

The Registrar of the Court is Mr. Philippe Couvreur; the Deputy-Registrar 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 in accordance with Article 29 of the Statute to ensure the speedy dispatch of business, is composed as follows:

Members:

President: Hisashi Owada;

Vice-President: Peter Tomka;

Judges: Abdul G. Koroma, Thomas Buergenthal and Bruno Simma.

Substitute members:

Judges: Bernardo Sepúlveda-Amor and Leonid Skotnikov.

(*b*) Jurisdiction of the Court[363]

On 31 December 2009, 192 States were Parties to the Statute of the Court.

No declarations were made, in 2009, recognizing the compulsory jurisdiction of the Court as contemplated by Article 36, paragraph 2 of the Statute.

Thus, at the end of 2009, the following 66 States had recognized such compulsory jurisdiction: Australia, Austria, Barbados, Belgium, Botswana, Bulgaria, Cambodia,

[362] For more information about the Court, see the reports of the International Court of Justice to the General Assembly, *Official Records of the General Assembly, Sixty-fourth session, Supplement No. 4,* (A/64/4) (for the period 1 August 2008 to 31 July 2009) and *Official Records of the General Assembly, Sixty-fifth session, Supplement No. 4,* (A/65/4) (for the period 1 August 2009 to 31 July 2010) (forthcoming).

[363] For further information regarding the jurisdiction of the International Court of Justice, see chapter I of *Multilateral Treaties Deposited with the Secretary-General,* available on the website http://treaties.un.org/Pages/ParticipationStatus.aspx.

Cameroon, Canada, the Commonwealth of Dominica, Costa Rica, Côte d'Ivoire, Cyprus, the Democratic Republic of the Congo, Denmark, Djibouti, Dominican Republic, Egypt, Estonia, Finland, Gambia, Georgia, Germany, Greece, Guinea-Bissau, Haiti, Honduras, Hungary, India, Japan, Kenya, Lesotho, Liberia, Liechtenstein, Luxembourg, Madagascar, Malawi, Malta, Mauritius, Mexico, the Netherlands, New Zealand, Nicaragua, Nigeria, Norway, Pakistan, Panama, Paraguay, Peru, the Philippines, Poland, Portugal, Guinea, Senegal, Slovakia, Somalia, Spain, Sudan, Suriname, Swaziland, Sweden, Switzerland, Togo, Uganda, the United Kingdom of Great Britain and Northern Ireland, and Uruguay.

(*c*) General Assembly

On 29 October 2009, the General Assembly adopted, without reference to a Main Committee, decision 64/508, in which it took note of the report of the International Court of Justice for the period from 1 August 2008 to 31 July 2009.[364]

On 2 December 2009, the General Assembly adopted, on the recommendation of the First Committee, resolution 64/55 entitled "Follow-up to the advisory opinion of the International Court of Justice on the Legality of the Threat or Use of Nuclear Weapons". The Assembly underlined once again the unanimous conclusion of the International Court of Justice that there exists an obligation to pursue in good faith and bring to a conclusion negotiations leading to nuclear disarmament in all its aspects under strict and effective international control, and called once again upon all States immediately to fulfil that obligation by commencing multilateral negotiations leading to an early conclusion of a nuclear weapons convention prohibiting the development, production, testing, deployment, stockpiling, transfer, threat or use of nuclear weapons and providing for their elimination. The Assembly further requested all States to inform the Secretary-General of the efforts and measures they have taken on the implementation of that resolution and nuclear disarmament, and requests the Secretary-General to apprise the General Assembly of that information at its sixty-fifth session.

14. International Law Commission[365]

(*a*) Membership of the Commission

On 4 May 2009, the Commission elected Mr. Shinya Murase (Japan) to fill the casual vacancy occasioned by the resignation of Mr. Chusei Yamada.[366]

The membership of the International Law Commission at its sixty-first session consisted of Mr. Ali Mohsen Fetais Al-Marri (Qatar), 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.

[364] For the text of the decisions, see *Official Records of the General Assembly, Sixty-fourth session, Supplement No. 4,* (A/64/49).

[365] Detailed information and documents relating to the work of the International Law Commission may be found on the Commission's website at http://www.un.org/law/ilc/.

[366] A/CN.4/613 and Add.1.

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. Shinya Murase (Japan), 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), Mr. Michael Wood (United Kingdom) and Ms. Hanqin Xue (China).

(*b*) Sixty-first session of the International Law Commission

The International Law Commission held, at its seat at the United Nations Office in Geneva, the first part of its sixty-first session from 4 May to 5 June 2009, and the second part of the session from 6 July to 7 August 2009.[367] The Commission considered the topics entitled "Responsibility of international organizations", "Reservations to treaties", "Expulsion of aliens", "Protection of persons in the event of disasters", "Shared natural resources", "The obligation to extradite or prosecute (*aut dedere aut judicare*)", "The Most-Favoured-Nation clause", and "Treaties over time". The consideration by the Commission of these topics is outlined below.

Concerning the topic "Responsibility of international organizations", the Commission had before it the seventh report of the Special Rapporteur, Mr. Giorgio Gaja,[368] which contained a review of comments made by States and international organizations on the draft articles provisionally adopted by the Commission and certain proposals of amendments thereto. The seventh report also addressed certain outstanding issues, such as the general provisions of the draft articles and the place of the chapter concerning the responsibility of a State in connection with the act of an international organization. Following its debate on the report, the Commission referred these amendments and six draft articles to the Drafting Committee. As a result of its consideration of the topic, the Commission adopted on first reading a set of 66 draft articles, together with commentaries thereto, on responsibility of international organizations. The Commission also decided, in accordance with articles 16 to 21 of its Statute, to transmit the draft articles, through the Secretary-General, to Governments and international organizations for comments and observations, with the request that such comments and observations be submitted to the Secretary-General by 1 January 2011.

In connection with the topic "Reservations to treaties", the Commission considered the fourteenth report of the Special Rapporteur, Mr. Alain Pellet,[369] dealing, in particular, with outstanding issues relating to the procedure for the formulation of interpretative declarations, and with the permissibility of reactions to reservations, interpretative declarations and reactions to interpretative declarations. The Commission referred to the Draft-

[367] For the report of the International Law Commission on the work at its sixty-first session, see *Official Records of the General Assembly, Sixty-fourth session, Supplement No. 10* (A/64/10).

[368] A/CN.4/610.

[369] A/CN.4/614 and Add.1.

ing Committee two draft guidelines on the form and communication of interpretative declarations, and seven draft guidelines on the permissibility of reactions to reservations and on the permissibility of interpretative declarations and reactions thereto. One of the main issues in the debate was the existence of conditions for permissibility of objections to reservations, in particular with respect to objections with "intermediate effect". The Commission also adopted 32 draft guidelines, together with commentaries thereto. In the consideration of these draft guidelines, the Commission proceeded on the basis of the draft guidelines contained in the tenth,[370] twelfth,[371] thirteenth[372] and fourteenth reports of the Special Rapporteur, which were referred to the Drafting Committee in 2006, 2007, 2008 and 2009, respectively.

In relation to the topic "Expulsion of aliens", the Commission considered the fifth report of the Special Rapporteur, Mr. Maurice Kamto,[373] dealing with questions relating to the protection of the human rights of persons who have been or are being expelled. In the light of the debate on the report, the Special Rapporteur submitted to the Commission a revised version of the draft articles contained therein,[374] as well as a new draft workplan with a view to structuring the draft articles.[375] The Commission decided to postpone to its next session the consideration of the revised draft articles presented by the Special Rapporteur.

Concerning the topic "Protection of persons in the event of disasters", the Commission had before it the second report of the Special Rapporteur, Mr. Eduardo Valencia-Ospina,[376] which focused on issues relating to the scope of the topic *ratione materiae*, *ratione personae* and *ratione temporis*, the definition of disaster, as well as the principles of solidarity and cooperation. Following a debate in the plenary on each of the three draft articles proposed by the Special Rapporteur, the Commission decided to refer all three draft articles to the Drafting Committee. The Commission took note of five draft articles provisionally adopted by the Drafting Committee, relating to scope, purpose, the definition of disaster, the relationship with international humanitarian law and the duty to cooperate. These draft articles, together with commentaries thereto, will be considered by the Commission at its next session.

As regards the topic "Shared natural resources", the Commission established, under the chairmanship of Mr. Enrique Candioti, a working group on shared natural resources, which, *inter alia*, had before it a working paper on oil and gas,[377] prepared by Mr. Chusei Yamada, Special Rapporteur on the topic, before he resigned from the Commission. The focus of work of the Working Group was on the feasibility of any future work by the Commission on aspects of the topic relating to transboundary oil and gas resources. The Working Group decided to entrust Mr. Shinya Murase with the responsibility of preparing a study, with the assistance of the Secretariat, to be submitted to the Working Group

[370] A/CN.4/558 and Corr.1, Add.1 and Corr.1 and Add.2.

[371] A/CN.4/584.

[372] A/CN.4/600.

[373] A/CN.4/611 and Corr.1.

[374] A/CN.4/617.

[375] A/CN.4/618.

[376] A/CN.4/615 and Corr.1.

[377] A/CN.4/608.

on Shared Natural Resources that may be established at the next session of the Commission. Moreover, the Working Group recommended, and the Commission endorsed, that a decision on any future work on oil and gas be deferred until 2010; and that, in the meantime, the 2007 questionnaire on oil and gas be recirculated to Governments, while also encouraging them to provide comments and information on any other matter concerning the issue of oil and gas, including, in particular, whether or not the Commission should address the subject.

Concerning the topic "The Obligation to Extradite or prosecute (*aut dedere aut judicare*)", the Commission established an open-ended Working Group under the chairmanship of Mr. Alain Pellet. The Working Group elaborated a general framework of issues that may need to be addressed in future work by the Special Rapporteur.

In relation to the topic "The Most-Favoured-Nation clause", the Commission established, under the co-chairmanship of Mr. Donald M. McRae and Mr. A. Rohan Perera, a study group on the Most-Favoured-Nation clause, which considered and agreed on a framework to serve as a road map of future work, in the light of issues highlighted in the syllabus on the topic. In particular, the Study Group made a preliminary assessment of the 1978 draft articles and decided on eight papers to be dealt with under the topics identified and assigned primary responsibility to its members for the preparation of the papers.

As regards the topic "Treaties over time", the Commission established, under the chairmanship of Mr. Georg Nolte, a study group on treaties over time, which considered the question of the scope of the work of the Study Group and agreed on a course of action to begin the consideration of the topic.

Further, the Commission appointed Mr. Lucius Caflisch as Special Rapporteur of the topic "Effects of armed conflicts on treaties"; and set up the Planning Group to consider its programme, procedures and working methods. Finally, the Working Group on the long-term programme of work was reconstituted, under the chairmanship of Mr. Enrique Candioti.

(*c*) Sixth Committee

The Sixth Committee considered the agenda item entitled "Report of the International Law Commission on the work of its sixty-first session" at its 15th to 23rd and 25th meetings, from 26 to 30 October and on 2, 3 and 12 November 2009, respectively. The Chairman of the International Law Commission at its sixty-first session introduced the report of the Commission: chapters I to IV and XIII at the 15th meeting, on 26 October 2009, chapters V and VI at the 17th meeting, on 28 October 2009, chapters VII and VIII at the 18th meeting, on 28 October 2009, and chapters IX, XI and XII at the 22nd meeting, on 2 November 2009.[378]

At the 25th meeting, on 12 November 2009, the representative of the Islamic Republic of Iran, on behalf of the Bureau, introduced a draft resolution entitled "Report of the International Law Commission on the work of its sixty-first session". At the same meeting, the Committee the adopted draft resolution without a vote.[379]

[378] Summary records of the Sixth Committee, A/C.6/64/SR.15, 17, 18 and 22.

[379] A/C.6/64/L.15.

(*d*) General Assembly

On 16 December 2009, the General Assembly adopted, on the recommendation of the Sixth Committee, resolution 64/114, by which it took note of the report of the International Law Commission on the work of its sixty-first session. The Assembly, *inter alia*, expressed its appreciation to the International Law Commission for the work accomplished at its sixty-first session, in particular for the completion, on first reading, of the draft articles on the topic "Responsibility of international organizations", and drew the attention of Governments to the importance for the Commission of having their comments and observations by 1 January 2011 on the draft articles and commentaries on the topic "Responsibility of international organizations".[380] The Assembly invited the Commission to continue taking measures to enhance its efficiency and productivity and to consider making proposals to that end, and encouraged it to continue taking cost-saving measures at its future sessions, without prejudice to the efficiency and effectiveness of its work.

In the same resolution, General Assembly took note of the report of the Secretary-General on assistance to special rapporteurs of the International Law Commission[381] and of paragraphs 240 to 242 of the report of the International Law Commission, and requested the Secretary-General to submit to the General Assembly at its sixty-fifth session options regarding additional support for the work of special rapporteurs. In addition, the Assembly welcomed the enhanced dialogue between the International Law Commission and the Sixth Committee at the sixty-fourth session of the General Assembly; stressed the desirability of further enhancing the dialogue between the two bodies, and in this context encouraged, *inter alia*, the continued practice of informal consultations in the form of discussions between the members of the Sixth Committee and the members of the Commission attending the sixty-fifth session of the Assembly. Finally, the General Assembly approved the conclusions reached by the International Law Commission in paragraph 232 of its report, and reaffirmed its previous decisions concerning the documentation and summary records of the Commission.[382]

15. United Nations Commission on International Trade Law[383]

(*a*) Forty-second session of the Commission

The United Nations Commission on International Trade Law (UNCITRAL) held its forty-second session in Vienna from 29 June to 17 July 2009 and adopted its report on 17 July 2009.[384]

At the session, the Commission finalized and adopted the UNCITRAL Practice Guide on Cross-Border Insolvency Cooperation. In adopting the Practice Guide, the Commis-

---

[380] *Official Records of the General Assembly, Sixty-fourth Session, Supplement No. 10* (A/64/10), chap. IV, sect. C.

[381] A/64/283.

[382] See General Assembly resolutions 32/151, para. 10, and 37/111, para. 5, and all subsequent resolutions on the annual reports of the International Law Commission to the General Assembly.

[383] For the membership of the United Nations Commission on International Trade Law, see *Official Records of the General Assembly, Sixty-fourth Session, Supplement No. 17* (A/64/17), para. 4.

[384] *Official Records of the General Assembly, Sixty-fourth Session, Supplement No. 17* (A/64/17).

sion noted that coordination and cooperation in cross-border insolvency cases had the potential to significantly improve the chances for rescuing financially troubled individuals and enterprise groups. Acknowledging that familiarity with cross-border insolvency cooperation and coordination and the means by which it might be implemented in practice was not widespread, the Commission requested the Secretary-General to publish and widely disseminate the Practice Guide as a valuable source of readily accessible information on current practice with respect to cross-border cooperation and coordination, and recommended that the Practice Guide be given due consideration, as appropriate, by various stakeholders involved in cross-border insolvency proceedings.[385]

Concerning the ongoing work in the field of insolvency law, the Commission noted the progress of its Working Group V (Insolvency Law) regarding consideration of the treatment of enterprise groups in insolvency, as reflected in the reports of its thirty-fifth[386] and thirty-sixth[387] sessions. The Commission noted the Working Group's decision that the text resulting from the work on enterprise groups would form part III of the UNCITRAL Legislative Guide on Insolvency Law.[388, 389]

As regards the review of the 1994 UNCITRAL Model Law on Procurement of Goods, Construction and Services,[390] the Commission noted the progress made by its Working Group I (Procurement) as reflected in the reports on the work of its fourteenth to sixteenth sessions.[391] The Commission established a committee of the whole to consider at the session a draft revised UNCITRAL model law on public procurement.[392] Upon recommendation of the committee of the whole, the Commission concluded that the revised model law was not ready for adoption at that session of the Commission and requested the Working Group to continue its work, noting the importance of completing the revised model law as soon as possible.[393]

Concerning work on the revision of the 1976 UNCITRAL Arbitration Rules,[394] the Commission noted the progress made by its Working Group II (Arbitration and Conciliation) as reflected in the reports of its forty-ninth[395] and fiftieth[396] sessions and expressed the hope that the revised UNCITRAL Arbitration Rules would be adopted at the forty-third session of the Commission, in 2010.[397] In response to a proposal aimed at expanding the

[385] *Ibid*., para. 24.

[386] A/CN.9/666.

[387] A/CN.9/671.

[388] United Nations publication, Sales No. E.05.V.10.

[389] *Official Records of the General Assembly, Sixty-fourth Session, Supplement No. 17* (A/64/17), paras. 302–304.

[390] *Ibid*., *Forty-ninth Session, Supplement No. 17 and corrigendum* (A/49/17 and Corr. 1), annex I.

[391] A/CN.9/664, A/CN.9/668 and A/CN.9/672.

[392] *Official Records of the General Assembly, Sixty-fourth Session, Supplement No. 17* (A/64/17), paras. 11 and 48.

[393] *Ibid*., paras. 283–285.

[394] United Nations publication, Sales No. E.77.V.6.

[395] A/CN.9/665.

[396] A/CN.9/669.

[397] *Official Records of the General Assembly, Sixty-fourth Session, Supplement No. 17* (A/64/17), paras. 291 and 298.

role of the Secretary-General of the Permanent Court of Arbitration at The Hague under the UNCITRAL Arbitration Rules, the Commission agreed that the mechanism existing in the 1976 Rules on designating and appointing authorities should not be changed.[398]

Concerning the preparation of a supplement to the UNCITRAL Legislative Guide on Secured Transactions specific to security rights in intellectual property, the Commission noted the progress made by its Working Group VI (Security Interests) as reflected in the reports of its fourteenth[399] and fifteenth[400] sessions. The Commission noted that the draft supplement would be submitted to the Commission for adoption at its forty-third session, in 2010.[401]

In response to the request from the International Chamber of Commerce, the Commission commended the use of the 2007 revision of the Chamber's Uniform Customs and Practice for Documentary Credits (UCP 600), as appropriate, in transactions involving the establishment of a documentary credit. In doing so, the Commission recognized that UCP 600, which was aimed at establishing uniformity of practice in relation to dealings with documentary credits, provided successful international contractual rules governing documentary credits.[402]

In the context of the ongoing project to monitor the legislative implementation of the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards,[403] the Commission noted that a draft guide to enactment of the New York Convention was being planned for preparation. Noting common features in that work and the work of the International Chamber of Commerce's Commission on Arbitration's task force established to examine the national rules of procedure for recognizing and enforcing foreign arbitral awards, the Commission encouraged more joint activities between the Secretariat and the Commission on Arbitration.[404]

The Commission considered its future work program in a number of areas. In the area of settlement of commercial disputes, the Commission confirmed that the question of transparency in treaty-based investor-State arbitration should be dealt with as a matter of priority[405] and also requested the Secretariat to pursue its efforts towards the preparation of a guide to enactment and use of the UNCITRAL Model Law on International Commercial Arbitration as amended in 2006.[406,407] In the area of transport law, the Commission agreed that the Secretariat should prepare and publish an index to the legislative history of the United Nations Convention on Contracts for the International Carriage of Goods

[398] *Ibid*., paras. 293–297.

[399] A/CN.9/667.

[400] A/CN.9/670.

[401] *Official Records of the General Assembly, Sixty-fourth Session, Supplement No. 17* (A/64/17), paras. 312–313.

[402] *Ibid*., paras. 356 and 357.

[403] United Nations, *Treaty Series*, vol. 330, No. 4739.

[404] *Official Records of the General Assembly, Sixty-fourth Session, Supplement No. 17* (A/64/17), paras. 360–361.

[405] *Ibid*., para. 299

[406] United Nations publication, Sales No. E.08.V.4.

[407] *Official Records of the General Assembly, Sixty-fourth Session, Supplement No. 17* (A/64/17), para. 300.

Wholly or Partly by Sea[408] (the Rotterdam Rules), and a brief introductory note describing the origin of the Convention.[409] In the area of electronic commerce, the Commission requested the Secretariat to remain engaged in the World Customs Organization (WCO)—UNCITRAL Joint Legal Task Force on Coordinated Border Management incorporating the International Single Window, and to prepare studies on electronic transferable records and on online dispute resolution.[410] The Commission took note of a proposal for future work in the area of financial fraud,[411] and expressed support for the publication and dissemination by the Secretariat of updated indicators of commercial fraud and continuous cooperation between the secretariats of UNCITRAL and the United Nations Office on Drugs and Crime (UNODC) in the work on economic fraud and identity-related crime.[412] In the area of microfinance, the Commission requested the Secretariat to prepare a detailed study of legal and regulatory issues of microfinance as well as proposals as to the form and nature of a reference document that the Commission might in the future consider preparing to establish a favourable legal framework in that area.[413]

The Commission noted the continuing work under the system established for the collection and dissemination of case law on UNCITRAL texts (CLOUT), in particular that as at 8 April 2009, 83 issues of compiled case-law abstracts from the CLOUT system had been prepared for publication, dealing with 851 cases relating mainly to the United Nations Convention on Contracts for the International Sale of Goods[414] and the UNCITRAL Model Law on International Commercial Arbitration, and also including some cases on the UNCITRAL Model Law on Cross-Border Insolvency.[415, 416]

The Commission took note of the status of its texts,[417] of reports of other organizations active in the field of international commercial law,[418] and of reports on international commercial arbitration moot competitions held worldwide.[419] It continued consideration of its technical assistance activities,[420] its working methods,[421] measures aimed at increasing coordination and cooperation with other organizations active in the field of international

[408] General Assembly resolution 63/122 of 11 December 2008.

[409] *Official Records of the General Assembly, Sixty-fourth Session, Supplement No. 17* (A/64/17), paras. 331 and 334.

[410] *Ibid*., paras. 337–343.

[411] *Ibid*., para. 355.

[412] *Ibid*., paras. 348 and 354.

[413] *Ibid*., paras. 432–433.

[414] United Nations, *Treaty Series*, vol. 1489, No. 25567.

[415] United Nations publication, Sales No. E.99.V.3.

[416] *Official Records of the General Assembly, Sixty-fourth Session, Supplement No. 17* (A/64/17), paras. 368–373.

[417] *Ibid*., paras. 376–378.

[418] *Ibid*., paras. 401–411.

[419] *Ibid*., paras. 421–426.

[420] *Ibid*., paras. 362–367.

[421] *Ibid*., paras. 382–397.

commercial law,[422] and its role in promoting the rule of law at the national and international levels.[423]

(*b*) General Assembly

At its sixty-fourth session, on 16 December 2009, the General Assembly, on the recommendation of the Sixth Committee,[424] adopted resolution 64/111 on the report of the Commission on the work of its forty-second session and resolution 64/112 on the Practice Guide on Cross-Border Insolvency Cooperation of the United Nations Commission on International Trade Law.

16. Legal questions dealt with by the Sixth Committee and other related subsidiary bodies of the General Assembly

During the sixty-fourth 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 adopted by the General Assembly during 2009.[425] The resolutions of the General Assembly described in this section were all adopted during the sixty-fourth session, on 16 December 2009, on the recommendation of the Sixth Committee.[426]

(*a*) 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.[427]

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

[422] *Ibid*., paras. 398–400.

[423] *Ibid*., paras. 412–420.

[424] Report of the Sixth Committee (A/64/447).

[425] 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/64/index.shtml.

[426] The Sixth Committee adopts drafts resolutions which are recommended for adoption by the General Assembly. These resolutions are contained in the reports of the Sixth Committee to the General Assembly in the various agenda items. The Sixth Committee reports also contain information concerning the relevant documentation on the consideration of the items by the Sixth Committee.

[427] General Assembly resolution 2006 (XIX) of 18 February 1965.

(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,[428] submitted pursuant to General Assembly resolutions 59/300, and 60/263 and decision 60/563.[429] At the same session, the General Assembly decided to establish an *Ad Hoc* Committee for the purpose of considering the report of the Group of Legal Experts, in particular its legal aspects.[430]

(i) *Sixth Committee*

The Sixth Committee considered the item at its 7th, 14th, 18th and 25th meetings, on 13, 23 and 28 October and on 12 November 2009, respectively.[431]

On 5 October 2009, the Sixth Committee established, pursuant to General Assembly resolution 63/119, a Working Group to continue to consideration of the report of the Group of Legal Experts,[432] focusing on its legal aspects, and taking into account the views of Member States and the information contained in the note by the Secretariat.[433] The Committee decided to open the Working Group to all Member States of the United Nations or members of the specialized agencies or of the International Atomic Energy Agency. The Working Group held two meetings, on 13 and 15 October. At the 14th meeting of the Sixth Committee, the Chairperson of the Working Group presented an oral report of the work of the Working Group.[434]

All speakers 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. It was reiterated that criminal accountability is a fundamental pillar of the rule of law, and that it is crucial for the Organization's integrity and effectiveness. Several speakers observed that it was important for the Organization to give a clear political signal that it will not tolerate criminal behaviour. It was noted that it was apparent from the Secretary-General's reports that some Member States do have the legislation and capacity to exercise jurisdiction, while others have some provisions for at least a limited exercise of jurisdiction. Member States were encouraged to exercise jurisdiction in applicable cases in order to ensure that criminal acts do not go unpunished. It was noted that the remedial measures adopted under General Assembly resolutions 62/63 and 63/119, if properly implemented, could address the issue of jurisdictional gaps. While a preference was expressed by some for a predominant role to be played by the host State, others preferred to emphasize the role of the State of nationality.

---

[428] For more information, see note by Secretary-General, A/60/980.

[429] General Assembly decision 61/503 A of 13 September 2006.

[430] 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.

[431] For the summary records of the Sixth Committee, see A/C.6/64/SR.7, 14, 18 and 25.

[432] For the report of the Working Group, see A/60/980.

[433] A/62/329.

[434] A/C.6/64/SR.14

Delegations emphasized the importance of strengthening cooperation between States, including between the host State and the State of nationality of the alleged offender, as well as cooperation between States and the United Nations, in prosecuting alleged crimes of a serious nature. The need for such cooperation was emphasized, *inter alia*, with respect to investigations, exchange of information and the collection of evidence, as well as regarding extradition matters and the execution of sentences. While recognizing that cooperation was to be carried out in conformity with domestic law, some delegations were of the view that such law should not serve as a justification for refraining from cooperating as recommended by the relevant General Assembly resolutions, and that amendments to domestic law should also be considered when necessary.

A number of delegations stressed the importance of receiving from the Secretariat statistics about substantiated allegations. It was also suggested that there was a need to ensure that there be no abuse of the process of waiver of privileges and immunities. A call was also made for the implementation of the amended draft model Memorandum of Understanding,[435] as well as for greater coordination with the work of the Special Committee on Peacekeeping Operations. All speakers expressed gratitude and support for the Organization's efforts in the pre-deployment training of peacekeeping personnel. Several delegations expressed support for the proposal for a negotiation of an international convention requiring parties to exercise criminal jurisdiction over nationals who participate in United Nations operations abroad. Some expressed a preference for including military contingents within the scope of such instrument, while other suggestions included also covering civil liability for economic damage and loss. Other delegations were of the view that it was still too premature to discuss a draft convention.

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".[436] At the 26th meeting, on 14 November 2009, the Committee adopted draft resolution A/C.6/63/L.10 without a vote.

(ii) *General Assembly*

In resolution 64/110, entitled "Criminal accountability of United Nations officials and experts on mission", the General Assembly, *inter alia*, expressed its appreciation for work of the Working Group of the Sixth Committee. 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. It also urged all States to consider establishing to the extent that they had not yet done so jurisdiction, particularly over crimes of a serious nature, as known in their existing domestic criminal laws, committed by their nationals while serving as United Nations officials or experts on mission, at least where the conduct as defined in the law of the State establishing jurisdiction also constitutes a crime under the laws of the host State.

---

[435] See A/61/19/Rev.1, annex, as amended by General Assembly resolution 61/291.

[436] A/C.6/63/L.10.

The General Assembly further urged the Secretariat to continue to ensure that requests to Member States seeking personnel to serve as experts on mission make States aware of the expectation that persons who serve in that capacity should meet high standards in their conduct and behaviour and be aware that certain conduct may amount to a crime for which they may be held accountable. The Secretary-General was requested to bring credible allegations that reveal that a crime may have been committed by United Nations officials or experts on mission to the attention of the States against whose nationals such allegations are made and to request from those States an indication of the status of their efforts to investigate and, as appropriate, prosecute crimes of a serious nature, as well as the types of appropriate assistance that States may wish to receive from the Secretariat for the purposes of such investigations and prosecutions. The General Assembly emphasized that the United Nations, in accordance with the applicable rules of the Organization, should take no action that would retaliate against or intimidate United Nations officials and experts on mission who report allegations concerning crimes of a serious nature committed by United Nations officials and experts on mission. It reiterated its request to the Secretary-General to report to the Assembly at its sixty-fifth session on the implementation of the present resolution, and to include in his report, *inter alia*, 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 United Nations officials and experts on mission, and information on how the United Nations might support Member States, at their request, in the development of domestic criminal law relevant to crimes of a serious nature committed by their nationals while serving as United Nations officials or experts on mission.

(*b*) United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law

The United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law was established by the General Assembly at its twentieth session, in 1965,[437] to provide direct assistance in the field of international law, as well as through the preparation and dissemination of publications and other information relating to international law. The Assembly authorized the continuation of the Programme at its annual sessions until its twenty-sixth session, and thereafter biennially.[438]

In the performance of the functions entrusted to him by the General Assembly, the Secretary-General is assisted by the Advisory Committee on the United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law, the members of which are appointed by the Assembly.

(i) *Sixth Committee*

The Sixth Committee considered the item at its 24th and 25th meetings, on 4 and 12 November 2009, respectively.[439]

---

[437] General Assembly resolution 2099 (XX) of 20 December 1965.

[438] For further information on the Programme, see http://www.un.org/law/programmeofassistance/.

[439] For the summary records, see A/C.6/64/SR.24 and 25.

Several delegations expressed support for the Programme of Assistance and considered it to be a key component in the efforts of the United Nations to strengthen international law. The importance of the United Nations Audiovisual Library of International Law[440] in the teaching and dissemination of international law was particularly emphasized. The view was expressed that due consideration should be given to placing the activities under the Programme of Assistance on the regular budget, which would be supplemented by voluntary contributions, to ensure their effective implementation. The point was also made that it would be useful to receive information from the Secretary-General concerning the possibility of providing funding from the regular budget for the Audiovisual Library, as referred to in paragraph 89 of his report on this item.[441]

At the 25th meeting, on 12 November, the representative of Ghana, on behalf of the Bureau, introduced a draft resolution entitled "United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law". The Committee adopted the draft resolution without a vote.[442]

(ii) *General Assembly*

The General Assembly adopted resolution 64/113, in which it, *inter alia*, approved the guidelines and recommendations set out in section III of the report of the Secretary-General on the implementation of the Programme of Assistance,[443] and authorized the Secretary-General to carry out in 2010 and 2011 the activities specified in the report. The General Assembly expressed its appreciation to the Secretary-General for his efforts to strengthen, expand and enhance the international law training and dissemination activities within the framework of the Programme of Assistance in 2008 and 2009, and recognized the importance of the United Nations Audiovisual Library of International Law as a major contribution to the teaching and dissemination of international law around the world. Member States and interested organizations and individuals were requsted to make voluntary contributions, *inter alia*, for the International Law Fellowship Programme and the United Nations Audiovisual Library of International Law.

(*c*) 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.[444] At its thirtieth

[440] Accessible at http://www.un.org/law/avl.

[441] A/64/495.

[442] Draft resolution A/C.6/64/L.17.

[443] A/64/495.

[444] General Assembly resolution 3349 (XXIX) of 17 December 1974.

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.[445] Since its thirtieth session, the General Assembly has reconvened the Special Committee every year.

The Special Committee met at the United Nations Headquarters from 17 to 25 February 2009. The issues considered by the Special Committee during its 2009 session were: maintenance of international peace and security in all its aspects; the working document submitted by the Russian Federation, entitled "Basic conditions and standard criteria for introduction and implementation of sanctions"; and 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.

(ii) *Sixth Committee*

The Sixth Committee considered the item at its 11th and 25th meetings, on 19 October and on 12 November 2009, respectively.[446] At the 11th meeting, on 19 October 2009, 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.[447]

Several delegations stressed that sanctions, which are an important tool for the maintenance of international peace and security, should be carefully targeted, take into account the rights of due process for the individuals concerned and the need to minimize their adverse impact on third parties, limited in duration and periodically reviewed. It was pointed out that sanctions should also have clear objectives, be proportionate, and comply with the Charter of the United Nations and human rights. Several other delegations also recalled that sanctions should be used only in last resort and be clearly defined. It was further emphasized that sanctions should strictly comply with international law and never be unilaterally imposed, applied preventively, or aimed at undermining the political and legal order in a State. The progress achieved in various United Nations fora to target and streamline sanctions procedures was welcomed by some delegations.

Regarding the question of peaceful settlement of disputes, several delegations reaffirmed the essential part it played in the maintenance of international peace and security, and the important role of the International Court of Justice as the principle judicial organ of the Organization. The importance of free choice of means in peaceful dispute settlement was also emphasized. While some delegations expressed their support for the proposal submitted by Belarus and the Russian Federation to request an advisory opinion from the Court on the legal consequences of the resort to the use of force by States without prior

[445] General Assembly resolution 3499 (XXX) of 15 December 1975.

[446] For the summary records of the Sixth Committee, see A/C.6/64/SR.11 and 25.

[447] A/64/33.

authorization by the Security Council except in the exercise of the right of self-defense, a divergent view was also voiced.

Regarding the working methods of the Special Committee, several delegations expressed their support for the topics currently on the agenda of the Special Committee. The lack of political will, rather than working methods, was pointed out as the cause for the reduction of productivity of the Special Committee in recent years. Several delegations mentioned the possibility of shortening the meeting time of the Special Committee, and emphasized the need for better approaches to efficiency. It was also stressed that no amendment to the Charter should be made before a clear mandate from the General Assembly was given.

Delegations welcomed the progress made in the preparation of the *Repertory of Practice of United Nations Organs* and the *Repertoire of the Practice of the Security Council,* in particular the efforts undertaken by the Secretariat in order to reduce the backlog of these publications and make them available on the Internet. Several delegations emphasized the importance of ensuring the timely issuance of all language versions of these publications. It was observed that the *Repertory* and the *Repertoire* contributed to the institutional memory of the Organization and were valuable tools for both researchers and practitioners.

At the 25th meeting of the Sixth Committee, on 12 November 2009, 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 Sixth Committee adopted the draft resolution without a vote.[448]

(iii) *General Assembly*

In resolution 64/115 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, *inter alia*, took note of the report of the Special Committee, and of the document entitled "Introduction and implementation of sanctions imposed by the United Nations".[449] It invited the Special Committee to at its 2010 session continue to identify new subjects for consideration in its future work with a view to contributing to the revitalization of the work of the United Nations, and requested it to submit a report on its work to the General Assembly at its sixty-fifth session. The Assembly commended the Secretary-General for the progress made in the preparation of studies of the *Repertory of Practice of United Nations Organs*, as well as the progress made towards updating the *Repertoire of the Practice of the Security Council,* and noted with appreciation the contributions made by Member States to the trust fund for the updating of the *Repertoire*, as well as the trust fund for the elimination of the backlog in the *Repertory*.

[448] Draft resolution A/C.6/64/L.9.

[449] Set out in the annex to resolution 64/115.

(*d*) 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, in 2006, at the request of Liechtenstein and Mexico.[450]

(i) *Sixth Committee*

The Sixth Committee considered the item at its 8th, 9th, 10th, 24th and 25th meetings, on 14 and 15 October and on 4 and 12 November 2009, respectively.[451]

In their general observations, delegations emphasized that the rule of law at the national and international levels was an essential condition for peaceful cooperation and coexistence among States, and critical to effectively address global challenges on the basis of the purposes and principles of the Charter and international law. Some delegations stated that a strong international system based on the rule of law was the main guarantor for the protection of the rights of the less powerful. It was pointed out that, in addition to ensuring compliance with international obligations, the concept of the rule of law implied a law-creating process that would involve all States, thereby strengthening the fairness and legitimacy of international law.

With regard to the subtopic "The rule of law at the international level", there was general agreement that the rule of law was based on a number of core principles. Reference was made in particular to the 2005 World Summit Outcome Document. Some delegations also mentioned the general obligation to honour international obligations in good faith, the obligation to refrain from the threat or use of force, the obligation to settle disputes by peaceful means, the obligation to protect human rights and fundamental freedoms and to abide by international humanitarian law. Some delegations further stated that the principle of sovereign equality of States was an important element in the promotion of the rule of law at the international level; the selective enforcement of international law was mentioned as an example of the failure to respect that basic principle. Several delegations emphasized the important role played by the International Court of Justice and other international tribunals in the peaceful settlement of international disputes. Some delegations supported wider recourse to the Court; other delegations encouraged States to accept the compulsory jurisdiction of the Court. It was noted that international criminal tribunals, by prosecuting international crimes, also contributed to the strengthening of the international rule of law.

With regard to the role of the United Nations in strengthening the rule of law at the international level, some delegations placed emphasis on the role played by the International Law Commission in the codification and progressive development of international law. Some delegations welcomed the contribution of the United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law, and the role of the United Nations Audiovisual Library of International Law in the education and dissemination of international law was emphasized. Several delegations welcomed the technical assistance and capacity-building provided by the United

[450] Letter dated 11 May 2006 from the Permanent Representatives of Liechtenstein and Mexico to the United Nations addressed to the Secretary-General (A/61/142).

[451] For the summary records of the Sixth Committee, see A/C.6/64/SR.8, 9, 10, 24 and 25.

Nations; it was pointed out that the Organization should ensure that capacity-building better responded to the needs of States, particularly developing countries.

Delegations commended the work carried out by the Rule of Law Coordination and Resource Group, supported by the Rule of Law Unit, and welcomed the Joint Strategic Plan for 2009–2011 which strengthened the coherence, quality and coordination of rule of law policy within the United Nations system. Some delegations stressed that the Unit should be provided with the necessary financial and human resources to carry out its tasks. The view was expressed that the Group should provide assistance in the collection of information in post-conflict situations for the prosecution of perpetrators of international crimes.

Many delegations stressed the intrinsic relationship between the rule of law at the international and national levels. According to some delegations, the international rule of law could only be meaningful if it was translated into national rule of law based on democratic principles and respect for human rights and fundamental freedoms. It was pointed out that the United Nations should enhance national capacities for domestic implementation of international obligations. Some delegations stressed, however, that the United Nations should provide technical assistance only to States that have requested it.

Some delegations highlighted the importance of strengthening the rule of law within the United Nations. Some delegations welcomed the implementation of the new system of administration of justice at the United Nations and the initiatives aimed at holding United Nations personnel and experts on mission criminally accountable for misconduct. While recognizing the efforts of the Security Council to improve the fairness of sanctions procedures, some delegations stressed the need for further progress in this regard. Concern was expressed at the risk of encroachment by the Security Council of the functions proper to other principal United Nations organs, in particular the General Assembly. Some delegations put emphasis on the importance of United Nations reform.

At the 24th meeting, on 4 November 2009, the representative of Liechtenstein, on behalf of the Bureau, introduced a draft resolution entitled "The rule of law at the national and international levels". At 25th meeting, on 12 November 2009, the Committee adopted the draft resolution without a vote.[452]

(ii) *General Assembly*

The General Assembly adopted resolution 64/116, in which it, *inter alia*, took note of the annual report of the Secretary-General on strengthening and coordinating United Nations rule of law activities,[453] and expressed its 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. The International Court of Justice, the United Nations Commission on International Trade Law and the International Law Commission were invited to continue to comment, in their respective reports to the General Assembly, on their current roles in promoting the rule of law. The Assembly stressed the need to provide the Rule of Law Unit with the necessary

[452] Draft resolution A/C.6/64/L.14.

[453] A/64/298.

funding and staff in order to enable it to carry out its tasks in an effective and sustainable manner, and urged the Secretary-General and Member States to continue to support the functioning of the Unit.

(*e*) The scope and application of the principle of universal jurisdiction

The topic "The scope and application of the principle of universal jurisdiction" was included on the agenda of the General Assembly at its sixty-fourth session on the request of the United Republic of Tanzania.[454]

(i) *Sixth Committee*

The Sixth Committee considered the item at its 12th, 13th, and 25th meetings, on 20 and 21 October and on 12 November 2009, respectively.[455]

In their general observations, most delegations affirmed that the principle of universal jurisdiction was enshrined in international law and constituted an important tool in the fight against impunity for serious international crimes. Several delegations, however, stated that caution should be exercised in addressing this topic, as there were still many ambiguities and inconsistencies in its application. Several delegations pointed out that the purpose of the debate in the Committee was not to question the legitimacy universal jurisdiction, but rather to strengthen the principle by defining its scope and application.

Delegations expressed differing views as to the scope of universal jurisdiction. Some delegations stated that it was uncertain whether the principle had become part of customary international law, whereas other delegations held that that was the case. With regard to the crimes covered under the principle of jurisdiction, some delegations considered that the principle covered crimes both under treaty law, such as war crimes and torture, and other international crimes, such as genocide and crimes against humanity. Some other delegations cautioned against an unwarranted expansion of the crimes covered under universal jurisdiction. Delegations also expressed differing views as to whether the principle required that there be a link between the offender and the State exercising jurisdiction, such as presence in the territory of the State. Several delegations emphasized that universal jurisdiction should be exercised in a subsidiary manner, when the State in which the alleged crimes took place was unable or unwilling to prosecute the offenders.

With regard to the application of the principle, delegations expressed the view that universal jurisdiction should always be exercised in good faith and in accordance with other principles of international law, including the rule of law, the sovereign equality of States, and immunity of State officials. Several delegations expressed concern with regard to the possible politicization of the principle, and the possibility of a unilateral and selective approach in its application. Concern was expressed for the possible application of the principle in cases where there was little understanding of a fragile political situation, and for its selective and unilateral application, which may hinder the development of African States and constitute an infringement of their sovereignty.

---

[454] Letter dated 29 June 2009 from the Permanent Representative of the United Republic of Tanzania to the United Nations addressed to the Secretary-General (A/63/237/Rev.1).

[455] For the summary records of the Sixth Committee, see A/C.6/64/SR.12, 13 and 25.

As to the future work on this topic, delegations observed that the General Assembly should clearly define the limits of the principle of universal jurisdiction. Some delegations pointed out that while universal jurisdiction was in some ways related to other topics, such as the exercise of jurisdiction by international tribunals, other forms of extraterritorial jurisdiction, the principle of *aut dedere aut judicare* and the immunity of State officials, it should be clearly distinguished from them. It was argued that it would be necessary to gather information about the practice of Member States and their different understandings of the principle before turning to further consideration of the topic.

Some delegations observed that the related topics of the immunity of State officials and the principle of *aut dedere aut judicare* were already under consideration by the International Law Commission and that a duplication of work should be avoided. Some delegations suggested that the topic should be referred to the International Law Commission for further consideration. Some other delegations observed that it would be useful that the Secretary-General prepare a report, on the basis of views submitted by Member States, which would serve as a basis for further consideration of the topic by the Committee. The view was expressed that, while the legal aspects of the topic were appropriately addressed in the Sixth Committee, some political aspects should be addressed at the plenary level of the General Assembly.

As to the possible outcome of the consideration of the item by the General Assembly, a call was made for an international mechanism to monitor prosecutions based on the invocation of universal jurisdiction; some delegations, however, expressed concern that such mechanism may infringe upon the principle of the independence of the judiciary. It was suggested that a set of guidelines or standards be developed that would guide national courts in meeting the challenges of prosecuting perpetrators under universal jurisdiction.

At the 25th meeting, on 12 November 2009, the representative of Rwanda, on behalf of the Bureau, introduced a draft decision entitled "The scope and application of the principle of universal jurisdiction". At the same meeting, the Sixth Committee adopted the draft resolution without a vote.[456]

(ii) *General Assembly*

The General Assembly adopted resolution 64/117, in which it requested the Secretary-General to invite Member States to submit, before 30 April 2010, information and observations on the scope and application of the principle of universal jurisdiction, including information on the relevant applicable international treaties, their domestic legal rules and judicial practice, and to prepare and submit to the General Assembly, at its sixty-fifth session, a report based on such information and observations. It further decided that the Sixth Committee shall continue its consideration of the scope and application of the principle of universal jurisdiction, without prejudice to the consideration of related issues in other forums of the United Nations.

[456] Draft resolution A/C.6/64/L./18.

(*f*) 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.[457]

(i) *Ad Hoc Committee established by General Assembly resolution 52/210 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.

At its thirteenth session, the *Ad Hoc* Committee held two plenary meetings, on 29 June to 2 July 2009.[458] Informal consultations were held on 29 June, and informal contacts on 29 and 30 June 2009.

(ii) *Sixth Committee*

The Sixth Committee considered the item at its 2nd to 5th, 14th, 24th and 25th meetings, on 6, 7, 9 and 23 October and on 4 and 12 November 2009, respectively.[459] At its 1st meeting, on 5 October 2009, 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, as contained in resolution 63/129. The Working Group held two meetings, on 9 and 15 October 2009, as well as informal consultations on 9, 12 and 22 October. Informal consultations were also held on the draft resolution on this item.

Delegations reiterated their strong condemnation of terrorism in all its forms and manifestations and recalled that terrorism remained a major threat to international peace and security. They underlined that terrorism could never be justified. It was also emphasized that States should refrain from directly or indirectly supporting terrorist activities. Delegations stressed that the fight against terrorism must be carried out in accordance with the purposes and principles of the Charter of the United Nations and international law, especially human rights, humanitarian and refugee law. Several delegations rejected the use or threat of use of force under the pretext of combating terrorism. A number of delegations pointed out the need to address the root causes of terrorism and to eliminate the conditions conducive to its spread. The interconnection between terrorism and organized crime was also highlighted. Concern was further expressed about nuclear terrorism, maritime security and threats caused by new technologies.

---

[457] A/8791 and Add.1 and Add.1/Corr.1.

[458] For the report of the Ad Hoc Committee, see *Official Records of the General Assembly, Sixty-fourth Session, Supplement No. 37* (A/64/37).

[459] For the summary records, see A/C.6/64/SR.2–5, 14, 24 and 25.

Some delegations stressed that terrorism should not be associated with any culture or religion; and dialogue among civilizations and religions as an integral part of the fight against terrorism was encouraged. Several delegations also emphasized that a distinction had to be made between acts of terrorism and the exercise of the right to self-determination and independence of peoples under colonial and other forms of alien domination and foreign occupation.

Delegations reiterated their strong condemnation of terrorism in all its forms and manifestations and recalled that terrorism remained a major threat to international peace and security. They underlined that terrorism could never be justified. It was also emphasized that States should refrain from directly or indirectly supporting terrorist activities. Delegations stressed that the fight against terrorism must be carried out in accordance with the purposes and principles of the Charter of the United Nations and international law, especially human rights, humanitarian and refugee law. Several delegations expressed their rejection of the use or threat of use of force under the pretext of combating terrorism.

A number of delegations pointed out the need to address the root causes of terrorism and to eliminate the conditions conducive to its spread. The interconnection between terrorism and organized crime was also highlighted. Concern was further expressed about nuclear terrorism, maritime security and threats caused by new technologies.

Several delegations reiterated their support for the proposal to convene a high-level conference under the auspices of the United Nations to consider the question of terrorism in all its aspects. In this regard, some delegations were of the opinion that the convening of such a conference should not be linked to the conclusion of negotiations on the draft comprehensive convention, while others stated that this question should only be considered once an agreement had been reached on the draft comprehensive convention.

(iii) *General Assembly*

The General Assembly adopted resolution 64/118, in which it, *inter alia*, called upon all Member States, the United Nations and other appropriate international, regional and subregional organizations to implement the United Nations Global Counter-Terrorism Strategy,[460] as well as the resolution relating to the first biennial review of the Strategy,[461] in all its aspects at the international, regional, subregional and national levels without delay, including by mobilizing resources and expertise. The Assembly reminded States of their obligations under relevant international conventions and protocols and Security Council resolutions, including resolution 1373 (2001), to ensure that perpetrators of terrorist acts are brought to justice, and called upon all States to cooperate to prevent and suppress terrorist acts. Further, the Assembly decided that the Ad Hoc Committee shall, on an expedited basis, continue to elaborate the draft comprehensive convention on international terrorism and shall 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.

[460] General Assembly resolution 60/288.

[461] General Assembly resolution 62/272.

(*g*) Revitalization of the work of the General Assembly

At its resumed sixty-third session, the General Assembly decided to establish, at its sixty-fourth session, an *Ad Hoc* Working Group on the revitalization of the General Assembly, open to all Member States, to identify further ways to 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 at its sixty-fourth session.[462]

At its 2nd plenary meeting on 18 September 2009, the General Assembly, on the recommendation of the General Committee, decided to allocate the 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-fifth session of the General Assembly.

(i) *Sixth Committee*

The Committee considered the item at its 25th meeting, on 12 November 2009.[463] At the 25th meeting, on 12 November 2009, the Chairman introduced the draft decision on the provisional programme of work for the sixty-fifth session of the General Assembly as proposed by the Bureau.[464] At the same meeting, the Committee adopted the draft decision on the provisional programme of work for the sixty-fifth session of the General Assembly.[465]

(ii) *General Assembly*

The General Assembly adopted on 16 December 2009 decision 64/525, by which it noted the decision of the Sixth Committee to adopt the provisional programme of work for the sixty-fifth session of the General Assembly, as proposed by the Bureau.

(*h*) Administration of justice at the United Nations

In its decision 62/519 of 6 December 2007, the General Assembly decided to establish an *Ad Hoc* Committee on the Administration of Justice at the United Nations, to be open to all Member States of the United Nations, members of the specialized agencies or members of the International Atomic Energy Agency, for the purpose of continuing the work on the legal aspects of the item "Administration of Justice at the United Nations", taking into account the results of the deliberations of the Sixth Committee on the item,[466] 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.

---

[462] General Assembly resolution 63/309.

[463] For the summary records, see A/C.6/64/SR.25.

[464] Contained in document A/C.6/64/L.6.

[465] Draft decision A/C.6/64/L.16.

[466] A/C.5/61/21, appendix I, and A/C.5/62/11, apppendix I.

(i) *Ad Hoc Committee on the Administration of Justice at the United Nations*

The *Ad Hoc* Committee held its second session 2009 at United Nations Headquarters from 20 to 24 April, pursuant to General Assembly decision 63/531. At its fourth meeting, on 20 April 2009, the Committee decided to proceed with its discussions as a working group of the whole. The Working Group held five meetings, on 20, 21, 22 and 24 April 2009.[467] At its fifth meeting, on 24 April 2009, the *Ad Hoc* Committee adopted its report.[468]

(ii) *Sixth Committee*

At the sixty-fourth session of the General Assembly, the agenda item entitled "Administration of justice at the United Nations" was allocated to the Fifth Committee for its consideration, and to the Sixth Committee for the purpose of considering the legal aspects of the reports to be submitted under this item, including the rules of procedure of the United Nations Dispute Tribunal (UNDT) and the United Nations Appeals Tribunal (UNAT). The Sixth Committee considered this item at its 1st and its 12th meetings, on 5 and 20 October, respectively.[469]

At the first meeting, the Sixth Committee decided to establish a Working Group on the Administration of Justice at the United Nations, in order to fulfil the mandate conferred by the General Assembly on the Committee. The Working Group held four meetings on 5, 6 and 9 October 2009. At the 12th meeting of the Sixth Committee, on 20 October, the Vice-Chairman of the Sixth Committee presented, on behalf of the Chairman of the Working Group, an oral report on the work of the Working Group.

Delegations expressed their support for the implementation of the new system of administration of justice and welcomed the appointment of the judges of the UNDT and UNAT, as well as the establishment of the Office of the Administration of Justice. While stating that the new system had already begun to prove itself, some delegations noted that it was open to further improvements. Some other delegations indicated that more information and experience was needed for a full assessment and effective review of the system. Some delegations called for a progress report from the Secretariat on all components of the new system. Delegations also attached great importance to transitional measures, with some of them reiterating their concern about the backlog of cases before the United Nations Administrative Tribunal.

It was emphasized that the nomination process of candidates for the posts of UNDT and UNAT judges should be based on merit and competency. Some delegations called for the finalization by the Internal Justice Council of the code of conduct for the judges. The importance of preserving multilingualism in the system was also stressed.

Several delegations favoured the approval by the General Assembly of the rules of procedure of the UNDT and UNAT. It was observed that the rules of procedure appeared to be consistent with the Statutes of the two Tribunals. Several delegations expressed their support for the activities of the Ombudsman and the Mediation Division. While some del-

[467] For an informal summary of the discussions in the Working Group of the Whole, see *Official Records of the General Assembly, Sixty-fourth Session, Supplement No. 55,* (A/64/55), Annex.

[468] *Official Records of the General Assembly, Sixty-fourth Session, Supplement No. 55* (A/64/55).

[469] Summary records of the Sixth Committee, A/C.6/64/SR.12.

egations advocated for an adequate interaction between the formal and informal system, the importance of an independent mediation mechanism, without any interference by the Tribunals, was also underlined. Some delegations called for the prompt issuance of the terms of reference of the Office of the Ombudsman. A call was also made for the speedy establishment by that office of a list of mediators.

With respect to the scope *ratione personae* of the new system, delegations emphasized the importance of ensuring effective remedies to all individuals working for the United Nations, including non-staff personnel. The possibility for non-staff personnel to request an appropriate management evaluation was welcomed. Some delegations referred to the possibility for staff associations to file applications before the Tribunals as a major outstanding legal issue. The view was expressed that staff associations should be granted standing before the UNDT and UNAT.

Delegations underlined the importance of continued availability of legal assistance for staff and expressed their support to the Office of Staff Legal Assistance. Attention was drawn to the importance of raising awareness about the new system, especially among personnel located in remote duty stations. Reference was made to the possibility for Member States, or other third parties with a cause of action, to submit claims based on the alleged responsibility of United Nations officials, e.g. within the framework of peace-keeping operations.

At the 12th meeting, the Vice-Chairman of the Sixth Committee introduced, on behalf of the Chairman of the Working Group, a draft resolution and a draft decision, both entitled "Administration of justice at the United Nations". At the same meeting, the Committee adopted the draft resolution[470] and draft decision[471] without a vote. Also at the same meeting, the Committee decided that its Chairman would send to the President of the General Assembly a letter, to be brought to the attention of the Chairman of the Fifth Committee and to be circulated as a document of the General Assembly, indicating a number of elements that, in the view of the Sixth Committee, should be included in the report to be submitted by the Secretary-General pursuant to paragraph 59 of General Assembly resolution 63/253, for consideration at the sixty-fifth session of the Assembly.[472]

(iii) *General Assembly*

The General Assembly adopted resolution 64/233 entitled "Administration of justice at the United Nations", by it which approved the rules of procedure of the UNDT and the UNAT, as set out in annexes I and II to the resolution.

In addition, the General Assembly adopted on 22 December 2009, on the recommendation of the Fifth Committee, resolution 64/233, also entitled "Administration of justice at the United Nations".

---

[470] Draft resolution A/C.6/64/L.2.

[471] Draft decision A/C.6/64/L.3.

[472] Letter dated 4 March 2010 from the President of the General Assembly to the Chairman of the Fifth Committee (A/C.5/64/16).

(*i*) Report of the Committee on Relations with the Host Country

(i) *Committee on Relations with the Host Country*

The Committee on Relations with the Host Country was established by the General Assembly at its twenty-sixth session, in 1971, to deal with a wide range of issues concerning the relationship between the United Nations and the United States of America as the host country, including questions pertaining to security of the missions and their personnel; privileges and immunities; immigration and taxation; housing, transportation and parking; insurance, education and health; and public relations issues with New York as the host city.[473] In 2009, the Committee was composed of the following Member States: Bulgaria, Canada, China, Costa Rica, Côte d'Ivoire, Cuba, Cyprus, France, Honduras, Hungary, Iraq, the Libyan Arab Jamahiriya, Malaysia, Mali, the Russian Federation, Senegal, Spain, the United Kingdom of Great Britain and Northern Ireland, and United States of America.

In 2009, the Committee held four meetings; on 12 March; on 16 June; on 2 October; and on 2 November 2009, respectively. At its 224th meeting, on 2 November 2009, the Committee adopted a number of conclusions and recommendations.[474]

(ii) *Sixth Committee*

The Sixth Committee considered the item at its 25th meeting, on 12 November 2009.[475]

Appreciation was expressed by some delegations 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[476] and the Headquarters Agreement[477] was stressed. Some delegations welcomed the decision of the host country to partly exempt diplomats from secondary screening procedures and the efforts to ensure the timely issuance of visas. A view was expressed welcoming steps taken by the host country regarding the exemption from property taxes. However, some other delegations urged the host country to remove travel restrictions for staff of certain nationalities. The need to continue to address the outstanding issues concerning the selective treatment of diplomats in the airports, immigration, customs procedures and parking, to treat all missions on the basis of equality and norms of international law as well as to issue visas in a timely fashion was also stressed.

The United States confirmed its commitment to fulfil its obligations under international law and highlighted, in particular, that it continued to regard its efforts aimed at

---

[473] General Assembly resolution 2819 (XXVI) of 15 December 1971.

[474] For the report of the Committee, see *Official Records of the General Assembly, Sixty-fourth session, Supplement No. 26* (A/64/26).

[475] For the summary records of the Sixth Committee, see A/C.6/64/SR.25.

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

[477] Agreement between the United Nations and the United States of America regarding the Headquarters of the United Nations, 4 August 1947. United Nations, *Treaty Series*, vol. 11, p. 11.

improving immigration procedures for diplomats at its airports and mitigating delays in visa issuance as ongoing and increasingly successful.

At the 25th meeting, on 12 November 2009, the representative of Bulgaria, on behalf of Bulgaria, Canada, Costa Rica, Côte d'Ivoire and Cyprus, introduced a draft resolution entitled "Report of the Committee on Relations with the Host Country". At the same meeting, the Committee adopted the draft resolution[478] without a vote.

(iii) *General Assembly*

In resolution 64/120, the General Assembly, *inter alia*, endorsed the recommendations and conclusions contained in the report of the Committee on Relations with the Host Country. The Assembly 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 a number of delegations have requested shortening the time frame applied by the host country for issuance of entry visas to representatives of Member States, since this time frame poses difficulties for the full-fledged participation of Member States in United Nations meetings. The Assembly expressed its appreciation for the efforts made by the host country, and hoped that the issues raised at the meetings of the Committee will continue to be resolved in a spirit of cooperation and in accordance with international law.

(*j*) Observer status in the General Assembly

(i) *Sixth Committee*

In 2009, the Sixth Committee considered a number of requests for observer status in the General Assembly.

At the 6th meeting, on 12 October 2009, the Sixth Committee considered the request for observer status for the International Olympic Committee. At the 10th meeting, on 15 October 2009, the Committee adopted draft resolution A/C.6/64/L.5 without a vote.

The Sixth Committee considered the request for observer status for the International Humanitarian Fact-Finding Commission, the International Conference of the Great Lakes Region of Africa, and the Global Fund to Fight AIDS, Tuberculosis and Malaria at the 10th meeting, on 15 October 2009. In response to a request made by a delegation, the Secretary of the Sixth Committee read out the text of General Assembly decision 49/426 of 9 December 1994 and paragraphs 2 and 3 of General Assembly resolution 54/195 of 17 December 1999 regarding the question of granting of observer status in the Assembly. At the 14th meeting, on 23 October 2009, the Committee adopted draft resolutions A/C.6/64/L.6, A/C.6/64/L.7 and A/C.6/64/L.4 without a vote.

At the 26th meeting, on 9 December, the Sixth Committee considered the request for observer status for the Parliamentary Assembly of the Mediterranean. A suggestion was made to revise the working methods of the Committee so as to have consistent criteria for the granting of observer status in the General Assembly. Some delegations spoke in favour

[478] Draft resolution A/C.6/64/L.13.

of considering the criteria for the granting of such observer status at the next session of the Assembly. On the 27th meeting, on 14 December 2009, the Committee adopted draft resolution A/C.6/64/L.19 without a vote.

At the 26th meeting, on 9 December 2009, the Committee considered the request for observer status for the Council of Presidents of the General Assembly. While some delegations expressed support for the granting of observer status to the Council of Presidents of the General Assembly, other delegations did not view the Council of Presidents as an intergovernmental organization and considered, in this connection, that it could not meet the criteria for the granting of observer status in the General Assembly established in the Assembly decision 49/426 of 9 December 1994. The need to address various technical legal issues relating to the request was also highlighted and a suggestion was made to study a possibility of granting of an *ad hoc* observer status to the Council of Presidents. A suggestion was also made to reconsider decision 49/426 and the process of granting of observer status in the General Assembly to various organizations and institutions. At the 27th meeting, on 14 December 2009, the representative of Saudi Arabia, on behalf of Saint Lucia, Saudi Arabia and Ukraine, withdrew the draft resolution. The Chair of the Committee read out the text of the letter to be sent by him, with the consent of the Committee, to the President of the General Assembly informing the President that the sponsors of the draft resolution withdrew the draft resolution and that, during the debate, several delegations expressed appreciation of the important contribution of the former Presidents of the General Assembly to the work of the Organization and suggested that appropriate ways of making available the unique expertise and institutional memory of the former Presidents of the General Assembly be identified, during the 64th session, in order to assist the Organization in meeting new challenges facing the international community. At the same meeting, the Sixth Committee concluded its consideration of the item without taking action.

(ii) *General Assembly*

On 19 October 2009, the General Assembly adopted resolution 64/3, by which it granted observer status to the International Olympic Committee.

On 16 December 2009, the General Assembly adopted resolutions 64/121, 64/122, 64/123 and 64/124, by which it granted observer status to the Humanitarian Fact-Finding Commission, the Global Fund to Fight AIDS, Tuberculosis and Malaria, the International Conference on the Great Lakes Region of Africa, and the Parliamentary Assembly of the Mediterranean, respectively.

17. *Ad hoc* international criminal tribunals[479]

(*a*) Organization of the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for the former Rwanda (ICTR)

(i) *Organization of the ICTY*

On 26 October 2009, Judge Patrick L. Robinson (Jamaica) and Judge O-Gon Kwon (South Korea) were re-elected as President and Vice-President, respectively, of the Tribunal for a two-year term effective from 17 November 2009.

On 2 September 2009, three new judges were sworn in, replacing Judges Christine Van Den Wyngaert (Belgium), Lord Iain Bonomy (United Kingdom) and Mohamed Shahabuddeen (Guyana), who resigned from the Tribunal. Judges Guy Delvoie (Belgium), Howard Morrison (United Kingdom) and Sir Burton Hall (The Bahamas) were appointed by the Secretary-General in accordance with Article 13*bis* of the ICTY Statute. Their appointments became effective as of 1 September, 31 August and 7 August 2009, respectively, until 31 December 2010 or until the completion of the cases to which they will be assigned if sooner.[480]

At the end of 2009, the permanent judges of the Tribunal were as follows: O-Gon Kwon (South Korea), Carmel A. Agius (Malta), Jean-Claude Antonetti (France), Christopher Flügge (Germany), Burton Hall (The Bahamas), Guy Delvoie (Belgium), Bakone Justice Moloto (South Africa), Howard Morrison (United Kingdom), Alphons M. M. Orie (Netherlands), and Kevin Parker (Australia).

By its resolution 1877 (2009) of 7 July 2009, the Security Council decided to allow for an additional *ad litem* judge to be appointed as a temporary measure, allowing for a maximum of thirteen *ad litem* judges until 31 December 2009. Consequently, Judge Prisca Matimba Nyambe (Zambia) was sworn in as an *ad litem* judge on 1 December 2009.[481] In the same resolution, the Council decided to extend the mandate of 11 *ad litem* judges until 31 December 2010, or until the completion of the cases to which they are assigned if sooner. It further decided to allow *ad litem* Judges Frederik Harhoff (Denmark), Flavia Lattanzi (Italy), Antoine Kesia-Mbe Mindua (Democratic Republic of the Congo), Árpád Prandler (Hungary) and Stefan Trechsel (Switzerland) to serve in the Tribunal beyond the cumulative period of service provided for under article 13 *ter*, paragraph 2, of the Statute of the Tribunal. By resolution 1900 (2009), the Security Council decided that, notwithstanding the expiry of their terms of office on 31 December 2009, *ad litem* Judges Kimberley Prost (Canada) and Ole Bjørn Støle (Norway) complete the case to which they were assigned before the expiry of their term of office; and decided to allow them to serve beyond the cumulative period of service provided for under article 13 *ter*, paragraph 2, of the Statute

[479] This section covers the International Criminal Tribunal for Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR), which were the subjects of resolutions of the Security Council and the General Assembly. Further information regarding the judgments of the ICTY and ICTR is contained in chapter VII of this publication.

[480] Security Council resolution 1877 (2009) of 7 July 2009.

[481] Letter dated 7 August 2009 from the Secretary-General addressed to the President of the Security Council (S/2009/410).

of the Tribunal. In the same resolution, the Council decided to extend until 31 March 2010 the period during which the total number of *ad litem* judges serving at the Tribunal may temporarily exceed the maximum provided for in article 12, paragraph 1, of the Statute of the Tribunal, to a maximum of thirteen at any one time.

At the end of 2009, the *ad litem* judges of the Tribunal were as follows: Melville Baird (Trinidad and Tobago), Pedro David (Argentina), Elizabeth Gwaunza (Zimbabwe), Frederick Harhoff (Denmark), Uldis Kinis (Latvia), Flavia Lattanzi (Italy), Antoine Kesia-Mbe Mindua (Democratic Republic of the Congo), Prisca Matimba Nyambe (Zambia), Michèle Picard (France), Árpád Prandler (Hungary), Kimberly Prost (Canada); Stefan Trechsel (Switzerland), and and Ole Bjørn Støle (Norway).

(ii) *Organization of the ICTR*

Judge Dennis Byron (Saint Kitts and Nevis) and Judge Khalida Rachid Khan (Pakistan) continued to serve as President and Vice-President, respectively, throughout 2009.

In 2009, Judge Bakhtiyar Tuzmukhamedov (Russian Federation) was sworn in as Judge of the ICTR to replace Judge Sergei Aleckseevich Egorov (Russian Federation).[482] By Security Council resolution 1878 (2009) of 7 July 2009, his term of office was extended until 31 December 2010, or until the completion of the cases to which he is assigned if sooner. By resolution 1901 (2009) of 16 December 2009, the Security Council decided that, notwithstanding the expiry of his term of office on 31 December 2009, Judge Erik Møse (Norway) complete the case to which he was assigned before the expiry of his term of office.

At the end of 2009, the permanent judges were as follows: Judge Dennis Byron (Saint Kitts and Nevis), Judge Khalida Rachid Khan (Pakistan), Judge William H. Sekule (United Republic of Tanzania), Judge Erik Møse (Norway), Judge Arlette Ramaroson (Madagascar), Judge Bakhtiyar Tuzmukhamedov (Russian Federation), and Judge Joseph Asoka Nihal De Silva (Sri Lanka).

Following a decision by the Security Council in its resolution 1855 (2008), three new *ad litem* judges wore sworn in in 2009. Judge Joseph Masanche (United Republic of Tanzania), Judge Mparany Rajohnson (Madagascar), and Judge Aydin Akay (Turkey), were sworn in on 12, 26 and 29 January, respectively.

At the end of 2009, the *ad litem* judges were as follows: Judge Solomy Balungi Bossa (Uganda), Judge Lee Gacugia Muthoga (Kenya), Judge Florence Rita Arrey (Cameroon), Judge Emile Francis Short (Ghana), Judge Taghrid Hikmet (Jordan), Judge Seon Ki Park (Republic of Korea), Judge Gberdao Gustave Kam (Burkina Faso), Judge Vagn Joensen (Denmark), Judge Joseph Masanche (United Republic of Tanzania), Judge Mparany Rajohnson (Madagascar), and Judge Aydin Akay (Turkey).

(iii) *Composition of the Appeals Chamber*

On 28 September 2009, Judge Carmel Agius (Malta) was sworn in as Appeals Judge.

[482] Letter dated 18 August 2009 from the Secretary-General to the President of the Security Council, (S/2009/425).

At the end of 2009, the composition of the Appeals Chamber was as follows: Patrick L. Robinson (Jamaica), Mehmet Güney (Turkey), Fausto Pocar (Italy), Judge Liu Daqun (China), Andrésia Vaz (Senegal), Theodor Meron (United States), and Carmel Agius (Malta).

(*b*) General Assembly

On 8 October 2009, the General Assembly adopted decisions 64/505 and 64/506, by which it took note of the reports[483] of the ICTR and the ICTY, respectively.[484]

On 24 December 2009, the General Assembly adopted, on the recommendation of the Fifth Committee, resolution 64/239 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". In the resolution, the Assembly, *inter alia*, took note of the second performance report of the Secretary-General on the budget of the ICTR for the biennium 2010–2011,[485] and endorsed the conclusions and recommendations contained in section III B of the related report of the Advisory Committee on Administrative and Budgetary Questions.[486] It further took note of the report of the Secretary-General on the financing of the International Criminal Tribunal for Rwanda for the biennium 2010–2011[487] and on the revised estimates arising from the effects of changes in rates of exchange and inflation.[488] The Assembly welcomed the work of the Tribunal to ensure the expeditious completion of its mandate and, with regard to the current budget, the commensurate reduction in the cost of the Tribunal, and noted that the Tribunal relies on *ad litem* judges in the implementation of its completion strategy. Finally, it decided to appropriate to the Special Account for the International Criminal Tribunal for Rwanda a total amount of 245,295,800 dollars gross (227,246,500 dollars net) for the biennium 2010–2011, as detailed in the annex to the resolution.

On the same day, the General Assembly adopted resolution 64/240 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". In the resolution, the General Assembly, *inter alia*, took note of the second performance report on the budget of the ICTY for the biennium 2008–2009,[489] and endorsed the conclusions and recommendations contained in section IV B of the related report of the Advisory Committee on Administrative and Budgetary Questions.[490] The Assembly also took note of the reports of the Secretary-General on the financing of the

[483] A/64/205 and A/64/206.

[484] For the text of the decisions, see *Official Records of the General Assembly, Sixty-fourth session, Supplement No. 4,* (A/64/49).

[485] A/64/538.

[486] A/64/555.

[487] A/64/478.

[488] A/64/570.

[489] A/64/512.

[490] A/64/555.

International Tribunal for the Former Yugoslavia for the biennium 2010–20113[491] and on the revised estimates arising from the effects of changes in rates of exchange and inflation.[492] It decided to appropriate to the Special Account for the International Tribunal for Yugoslavia a total amount of US$ 290,285,500 gross (US$ 268,265,300 net) for the biennium 2010–2011, as detailed in the annex to the resolution.

(*c*) Amendments to the Statutes of ICTY and ICTR

(i) *Amendments to the Statute of the International Criminal Tribunal for Yugoslavia*[493]

By resolution 1877 (2009) of 7 July 2009, the Security Council amended article 14 of the Statute of the ICTY, to allow for four additional permanent judges serving in the Trial Chambers to be assigned to the Appeals Chamber, on the completion of the cases to which each judge is assigned. Similarly, four permanent judges serving in the Trial Chambers of the ICTR could, in consultation with the President of the ICTR, be assigned to the Appeals Chamber.

(ii) *Amendments to the Statute of the International Criminal Tribunal for Rwanda*[494]

By resolution 1878 (2009) of 7 July 2009, the Security Council decided to amend article 13, paragraph 3, of the Statute of the ICTY to allow for up to four additional permanent judges serving in the Trial Chambers to be assigned to the Appeals Chamber, on the completion of the cases to which they are assigned.

(*d*) Amendments to the Rules of Procedure and Evidence of the ICTY and ICTR

(i) *Amendments to the Rules of Procedure and Evidence of the ICTY*

On 24 July 2009, paragraph E of rule 77 (Contempt of Tribunal) was amended as to the set time limit for entering a plea pursuant to Rule 62(A), disclosure pursuant to rule 66(A)(i), or filing of preliminary motions pursuant to rule 72(A) to a maximum of ten days.

---

[491] A/64/476.

[492] A/64/570.

[493] The Statute of the Tribunal is contained in the annex to the report of the Secretary-General pursuant to paragraph 2 of Security Council resolution 808 (1993), 3 May 1993, (S/25704); and was adopted by the Security Council resolution 827 (1993). The Statute has subsequently been amended by Security Council resolutions 1166 (1998), 1329 (2000), 1411 (2002), 1431 (2002), 1481 (2003), 1597 (2005), 1660 (2006), and 1837 (2008).

[494] The Statute of the Tribunal is contained in the annex to Security Council resolution 955 (1994); and was subsequently amended by Security Council resolutions 1165 (1998), 1411 (2002), 1431 (2002), 1503 (2003), and 1512 (2003).

(ii) *Amendments to the Rules of Procedure and Evidence of the ICTR*

No amendments were made to the Rules of Procedure and Evidence of the ICTR in 2009.

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

1. Universal Postal Union

General review of the legal activities of the Universal Postal Union

In July 2009, the Universal Postal Union (UPU) and the International Civil Aviation Organization (ICAO) signed a memorandum of understanding aimed at strengthening their cooperation on the basic rate applicable to the settlement of accounts between postal operators in respect of air conveyance dues.

In March 2009, UPU signed cooperation agreements with Benin, Burkina Faso, Mali, Mauritania, Niger and Senegal on the implementation of a project co-financed by the UPU, the International Fund for Agricultural Development (IFAD), *La Poste* (France) and the above-mentioned countries, aimed at extending the UPU network of electronic payment services in the rural areas of French-speaking West African countries.

On the basis of a resolution of the 1999 Universal Postal Congress authorizing Palestine to carry out direct exchanges of postal services with Union member countries, the UPU Postal Operations Council determined the parcel-post inward land rates applicable to Palestine, facilitating the dispatch of parcels between Palestine and other UPU member countries.

In its resolution CEP 6/2009.1, the UPU Postal Operations Council also provisionally approved a model service agreement for postal payment services.

The UPU Council of Administration decided to create an ethics office at the UPU International Bureau and approved the terms of reference covering the operation of this office, the amendments to be made to the Staff Regulations, the system of financial disclosure and declaration of interest envisaged by the UPU International Bureau and the budget required to introduce this system.

The Council of Administration also approved the UPU Provident Scheme Management Board's decision to implement measures with a view to improving the Scheme's structure. The measures taken are as follows: raising the retirement age to 65 years for new participants in the UPU Provident Scheme, increasing employees' and the employer's contribution rates to the Provident Scheme, lowering the average hypothetical rate for future indexation of benefits, introducing a regulatory mechanism under which the indexation of benefits may be temporarily limited during periods of coverage shortfall and activating the Union guarantee mechanism (1 million Swiss francs per annum until the Scheme's degree of coverage reaches 85%).

In its resolution CA 7/2009, the Council of Administration entrusted a Human Resources Reflection Group with the study of the major issues concerning UPU staffing.

Following the Council of Administration's resolution CA 1/2009, establishing the basic principles for implementing the '.post' project, in December 2009 the UPU signed an agreement with the Internet Corporation for Assigned Names and Numbers (ICANN) under which ICANN granted the UPU the authority to manage the post top level domain for the different players in the postal sector.

2. Food and Agricultural Organization of the United Nations

(*a*) Constitutional and general legal matters

During 2009, the Governing Bodies of the Food and Agriculture Organization of the United Nations (FAO) reviewed and adopted amendments to the Constitution, the General Rules of the Organization and the Financial Regulations, as well as a number of Resolutions clarifying the functions of the Governing Bodies and other governance processes.

At its eighty-fourth (2 to 4 February 2009),[495] eighty-fifth (23 and 24 February 2009),[496] eighty-sixth (7 and 8 May 2009),[497] eighty-seventh (25 and 26 May 2009),[498] eighty-eighth (23 to 25 September 2009)[499] and eighty-ninth (27 to 28 October 2009)[500] sessions, the Committee on Constitutional and Legal Matters (CCLM) formulated and reviewed draft amendments to the Basic Texts. This work was endorsed by the Council at its hundred and thirty-sixth (15 to 19 June 2009)[501] and hundred and thirty-seventh (28 September to 2 October 2009)[502] sessions. Finally, the amendments were adopted by the Conference at its thirty-sixth session (18–23 November 2009).[503]

The Conference adopted amendments to the FAO Constitution by resolution 5/2009 entitled 'Implementation of the Immediate Plan of Action for FAO Renewal (2009–11), Amendments to the Constitution' and resolution 13/2009 entitled 'Reform of the Committee on World Food Security, Amendments to the Constitution.'[504] The Conference

[495] See the report of the eighty-fourth session of the Committee on Constitutional and Legal Matters (CL 136/11).

[496] See the report of the eighty-fifth session of the Committee on Constitutional and Legal Matters (CL 136/13).

[497] See the report of the eighty-sixth session of the Committee on Constitutional and Legal Matters (CL 136/19).

[498] See the report of the eighty-seventh session of the Committee on Constitutional and Legal Matters (CL 136/20).

[499] See the report of the eighty-eighth session of the Committee on Constitutional and Legal Matters (CL 137/5).

[500] See the report of the eighty-ninth session of the Committee on Constitutional and Legal Matters (C 2009/LIM/12).

[501] See the report of the hundred and thirty-sixth session of the Council of the Food and Agriculture Organization of the United Nations (C 136/REP), paras. 92–97.

[502] See the report of the hundred and thirty-seventh session of the Council of the Food and Agriculture Organization of the United Nations (C 137/REP), paras. 46–64.

[503] See the report of the thirty-sixth session of the Conference of the Food and Agriculture Organization of the United Nations, (C 2009/REP and Corr.1 and Corr.2).

[504] *Ibid.*, paras. 139 and 153.

amended article III paragraph 9, IV paragraph 6, article V paragraphs 2,4, 6 and 7, article VII paragraphs 1 and 3, and article XIV paragraph 7 of the Constitution.

The Conference also adopted amendments to the General Rules of the Organization and to its Financial Regulations by resolution 6/2009 entitled 'Implementation of the Immediate Plan of Action for FAO Renewal (2009–11), Amendments to the General Rules of the Organization and to the Financial Regulations' and resolution 14/2009 entitled "Reform of the Committee on World Food Security, Amendments to the General Rules of the Organization".[505]

The governance reform, as prescribed by the Immediate Plan of Acton (IPA), also involved the adoption of a number of resolutions clarifying the functions of the Governing Bodies and other governance processes (resolution 7/2009 entitled "Implementation of the Immediate Plan of Action Regarding the Conference (IPA Actions 2.5, 2.6 and 2.10)", resolution 8/2009 entitled "Implementation of the Immediate Plan of Action Regarding the Council of FAO (IPA Actions 2.14—2.25)", resolution 9/2009 entitled "Implementation of the Immediate Plan of Action on the Independent Chairperson of the Council (IPA Actions 2.26 to 2.34)", resolution 10/2009 "Implementation of the Immediate Plan of Action on Reform of the Programming, Budgeting and Results-based Monitoring System (IPA Actions 3.1 to 3.11)" and resolution 11/2009 entitled "Implementation of the Immediate Plan of Action on Ministerial Meetings (IPA Actions 2.66 and 2.67)").[506] These resolutions, as well as a definition of Governing Bodies adopted by the Conference,[507] will be included in volume II of the Basic Texts. The Conference endorsed the overall future structure of the Basic Texts of FAO corresponding to existing volume I, with the amended instruments, and new volume II as set out in Section I of document C 2009/LIM/8.

The revised Basic Texts, as amended by the Conference, will be available at the Legal Office's website.[508] In addition, the website of FAO under the activities of the "Committee on Constitutional and Legal Matters" presents a large number of documents concerning the justification for, and the proposed amendments to, the Basic Texts of the Organization.

(*b*) Legislative matters

(i) *Activities connected with international meetings*

– Meeting of the Group of Technical and Legal Experts on Compliance in the context of the International Regime on Access and Benefit-sharing (Tokyo, 27 to 30 January 2009).
– Steering Committee meeting to prepare for the second regional inter-governmental meeting on the establishment of a Central Asian and Caucasus regional fisheries arrangement (Ankara, 24 to 26 March 2009).
– Twenty-fifth Session of the CODEX Committee on General Principles (Paris, 30 March to 3 April 2009).

[505] *Ibid.*, paras. 140 and 154

[506] *Ibid.*, para. 141.

[507] C 2009/LIM, section H.

[508] See http://www.fao.org/legal/index_en.htm.

- ECOLEX Participation in the 16th Steering Committee (FAO/ International Union for Conservation of Nature and Natural Resources /United Nations Environmental Programme) (Bonn, 26 to 28 May 2009).
- International Treaty on Plant Genetic Resources for Agriculture, Governing Body, Third Session (Tunis, 1 to 5 June 2009)
- Second Intergovernmental Meeting on the Establishment of Central Asian and Caucasus Regional Fisheries Organization (Trabzon, 3 to 5 June 2009).
- FAO-EC-DIP Regional Seminar on rural development and agricultural and food quality linked to geographical origin in Asia (Bangkok, 8 to 11 June 2009).
- United Nations Commission on International Trade Law, 42nd Session (Vienna, 12 to 16 June 2009).
- United Nations Joint Staff Pension Board, 56th Session (Vienna, 10 to 17 July 2009).
- Asia and Pacific Plant Protection Commission, 26th Session (New Delhi, 31 August to 4 September 2009).
- Meeting of Standing Committee Working Group on Introduction from the Sea (Geneva, 14 to 16 September 2009).
- Division of Environmental Law and Conventions—Multilateral environmental agreement. Knowledge Management Meeting—Knowledge Management in the context of environment related multilateral agreements and conventions (Geneva, 22 to 24 September 2009).
- FAO Commission on genetic resources for food and agriculture, 12th Regular Session (Rome, 19 to 23 October 2009).
- *Ad hoc* open-ended working group on access and benefit-sharing, Eighth meeting (Montreal, 9 to 15 November 2009).

(ii) *Legislative assistance and advice*

During 2009 legislative assistance and advice were given to the following countries on the following topics:

- Food Safety and Quality: Azerbaijan, Cambodia, Cameroon, Dominican Republic, Laos, Tunisia, Uruguay and Vietnam.
- Animal (animal health, animal welfare, livestock, feed, veterinary drugs): Armenia, Belize, Cameroon, Costa Rica, Dominican Republic, El Salvador, Gabon, Guatemala, Honduras, Nicaragua, Panama, Timor-Leste, Tunisia, Ukraine and Uruguay.
- Plant (pesticides, seeds, organic, plant protection): Afghanistan, Azerbaijan, Bangladesh, Benin, Cambodia, Costa Rica, Croatia, the Commonwealth of Dominica, Iran (Islamic Republic of), Iraq, Kazakhstan, Kyrgyzstan, Lebanon, Lesotho, Madagascar, Maldives, Pakistan, the Arab Republic of Syria, Tajikistan, the Unietd Republic of Tanzania, Tunisia, Turkey, Turkmenistan and Uzbekistan.
- Biotechnology (plant property rights, biosafety, genetic resources): Bangladesh, Croatia and the Commonwealth of Dominica.

- Agrarian (trade, marketing, gender, agrarian): Angola, Cape Verde, the Democratic Republic of the Congo, Iraq, Kenya, Maldives, Morocco, Mozambique, Sao Tome and Principe, Timor-Leste and Uruguay.
- Land and Water: Afghanistan, Angola, Bolivia (Plurinational State of), Cape Verde, China, Djibouti, Guinea, Iraq, Maldives, Mali, Mauritania, Mozambique, Sao Tome and Principe, Senegal, Thailand, Timor-Leste and Uruguay.
- Food Security: Afghanistan, Colombia, Ecuador, Mozambique and El Salvador.
- Fisheries and Aquaculture: Armenia, Azerbaijan, Benin, Bolivia, Cape Verde, People's Republic of China, Côte d'Ivoire, Djibouti, the Gambia, Georgia, Ghana, Guinea, Guinea-Bissau, Islamic Republic of Iran (Islamic Republic of), Iraq, Kyrgyzstan, Liberia, Mauritania, Nigeria, the Russian Federation, Sierra Leone, Senegal, Tajikistan, Togo, Turkey, Uruguay, Uzbekistan and Vietnam.
- Forestry and Environment (wildlife, climate change, natural resources): Burkina Faso, Burundi, Costa Rica, Democratic Republic of the Congo, Ecuador, Kazakhstan, the Gambia, Guinea, Haiti, Côte d'Ivoire, Lebanon, Macedonia, Mali, Mauritania, Rwanda, Senegal, Serbia, Syria, Tajikistan, Togo, Tonga and Tunisia.

(iii) *Legislative research and publications*

The FAO Legal Office published the following Legal papers online in 2009:

- Legislatively Establishing a Health Certification Programme for Citrus Wildlife legislation and the empowerment of the poor in Latin America;
- Wildlife law and the legal empowerment of the poor in Sub-Saharan Africa: new case studies;
- Wildlife law and the legal empowerment of the poor in Sub-Saharan Africa.

3. United Nations Educational, Scientific and Cultural Organization

(*a*) Membership or the Organization

At its 10th plenary meeting, on 12 October 2009, the 35th session of the General Conference decided to admit the Faroes as an Associate Member of the Organization. The Organization has now seven Associate Members.

(*b*) Internal regulations

(i) *Entry into force of previously adopted regulations*

Within the period covered by this review, the Convention on the Protection of the Underwater Cultural Heritage, adopted in Paris on 2 November 2001, entered into force on 2 January 2009.

The text of all UNESCO standard-setting instruments, as well as the list of States parties to the conventions and agreements, can be found on UNESCO's website.[509]

[509] See http://www.unesco.org/en/la.

(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

By its resolution 41, the 35th session of the General Conference invited Member States to pursue opportunities to utilize the work completed thus far, as appropriate and decided to take note of the draft of the declaration of principles relating to cultural objects displaced in connection with the Second World War.

b. Preliminary study of the technical and legal aspects of a possible international standard-setting instrument for the protection of indigenous and endangered languages

By its resolution 43, the 35th session of the General Conference invited the Director-General, for the purposes of finalizing this study, to convene a meeting of experts from different regions, including representatives of indigenous peoples, as soon as the necessary extrabudgetary funds have been raised, in consultation with Member States, as requested in 179 EX/Decision 10. The General Conference requested the Director-General to set up a focal point with responsibility for following up and coordinating UNESCO actions in favor of a possible international standard-setting instrument for the protection of indigenous and endangered languages. The General Conference invited the Director-General to continue to monitor: (i) the impact of existing standard-setting instruments on the protection of languages; (ii) national and regional policies on language protection and language planning; and (iii) the international cooperation programmes in this field, together with the provision of funds from donors for that purpose. The General Conference requested the Director-General to continue UNESCO's work on, and to update, the Atlas of the World's Languages in Danger. The General Conference decided to inscribe an item on the agenda of its 36th session on this matter, entitled: 'Preliminary study of the technical and legal aspects of a possible international standard-setting instrument for the protection of indigenous and endangered languages, including a study of the outcomes of the programme implemented by UNESCO relating to this issue.'

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 landscapes

By its resolution 42, the 35th session of the General Conference reiterated its conviction that UNESCO should play a leading international role in establishing principles and guidelines for the conservation of historic urban landscapes which may support Member States and local communities in conserving such landscapes. The General Conference decided that existing UNESCO standard-setting instruments relating to the conservation of historic urban landscapes should be supplemented through a new recommendation on this matter. The General Conference invited the Director-General to prepare a preliminary report setting forth the position with regard to the conservation of historic urban landscapes, to convene a meeting of experts (category VI) to compile a first draft of the proposed recommendation to be sent to Member States for comments, to further convene an intergovernmental meeting of experts (category II) to reconsider the draft in the light

of the comments received, and to submit a final report and, if appropriate, a revised draft to the General Conference at its 36th session, in 2011.

(ii) *Human rights*

Examination of cases and questions concerning the exercise of human rights coming within UNESCO's fields of competence

The Committee on Conventions and Recommendations met in private sessions at UNESCO Headquarters from 16 to 18 April 2009 and from 8 to 10 September 2009 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 2009 session, the Committee examined 20 communications of which one was examined with a view to determining its admissibility or otherwise; 18 were examined as to their substance; and one was examined for the first time. One communication was struck from the list because it was considered as having been settled. The examination of the 19 remaining communications was deferred. The Committee presented its report to the Executive Board at its 181st session.

At its September 2009 session, the Committee examined 22 communications of which one was examined with a view to determining its admissibility or otherwise; 19 were examined as to their substance; and 2 were examined for the first time. One communication was struck from the list because it was considered as having been settled. One communication was also struck from the list because the alleged victim died during the examination of the case by the Committee. One communication was suspended. The examination of the 19 remaining communications was deferred. The Committee presented its report to the Executive Board at its 182nd session.

(iii) *Copyright activities*

a. Information and public awareness activities

The collection of national copyrights laws is an essential tool for professionals, students and researchers, which endeavours to provide access to legal texts. It was thoroughly updated in 2009 and currently comprises approximately 145 national copyright and related rights legislations of UNESCO Member States.

The UNESCO World Anti-Piracy Observatory, a web-based reference tool, is another UNESCO information–sharing initiative in the copyright area which was developed in 2009. 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. More than 100 country profiles are available for free down loading and use.

b. Training and teaching activities

Teaching of copyright law has been pursued by the existing network of UNESCO Copyright Chairs.

c. Administration of the Universal Copyright Convention and the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations

The 20th session of the Intergovernmental Committee of the Rome Convention[510] (ICR), for which the secretariat is provided jointly by UNESCO, the World Intellectual Property Organization (WIPO) and the International Labour Organization (ILO), was hosted by WIPO and took place in September 2009 in Geneva.

4. International Maritime Organization

(*a*) Membership of the Organization

As of 31 December 2009, the membership of the International Maritime Organization (IMO) stood at 169.

(*b*) Review of the legal activities undertaken by the IMO

The Legal Committee (hereinafter the Committee) held its ninety-fifth session from 30 March to 3 April 2009 and its ninety-sixth session from 5 to 9 October 2009.

(i) *Monitoring the implementation of the HNS Convention: Development of a possible draft protocol to the Convention*

The Committee concluded its consideration of a draft protocol to the 1996 International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea (the HNS Convention).[511]

a. Definition of HNS

The Committee approved a number of amendments to the definition of HNS. In this connection, it also considered a proposal that, rather than restricting the application of the International Maritime Dangerous Goods (IMDG) Code to its 1996 version, the HNS Convention should incorporate subsequent amendments, with specific reference to substances to be excluded, notably coal, fishmeal and woodchips.

After an extensive debate on this issue, the Committee decided to maintain its decision to restrict the reference in the definition of the HNS Convention to IMDG substances, to the substances included in the 1996 version of the IMDG Code.

---

[510] International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations, 1961. United Nations, *Treaty Series* , vol. 496, p. 43.

[511] LEG/CONF.10/8/2 of 9 May 1996.

b. Treaty law issues

The Committee noted the content of a document submitted by the Secretariat, providing information on the possible legal implications of a new protocol for States which are Contracting States to the HNS Convention.

c. Scope of application

The Committee approved a proposal to amend the current text of article 3 (d) of The HNS Convention, clarifying the geographic scope of application of the Convention, subject to the substitution of the word 'damages' by 'damage.'

d. Recommendation for the convening of an international conference

The Committee approved the basic text, as amended by the decisions adopted by the Committee at this session, for the purpose of its submission for consideration by a diplomatic conference, and agreed to advise the Council accordingly.

In line with previous practice, the Committee instructed the Secretariat to prepare and circulate the basic text of the draft protocol, for consideration by a diplomatic conference and authorized the Secretariat to edit the text in line with the style and language of other treaties adopted by the Organization.

(ii) *Provision of financial security*

a. 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 approved the recommendations made by the *Ad Hoc* Expert Working Group on Liability and Compensation regarding Claims for Death, Personal Injury and Abandonment of Seafarers, in particular, that financial security should be made mandatory for both death and personal injury and abandonment claims, through amendments to the International Maritime Labour Convention, 2006,[512] once this Convention enters into force. The Committee noted that the Joint IMO/ILO *Ad Hoc* Expert Working Group had fulfilled its mandated. The Committee also noted that both IMO and the International Labour Organization (ILO) should continue to impress on Governments the importance of the voluntary implementation of the existing Guidelines on Provision of Financial Security in Case of Abandonment of Seafarers,[513] pending the adoption and entry into force of the appropriate mandatory solutions.

[512] Maritime Labour Convention, adopted by the 94th session of the General Conference of the International Labour Organization, Geneva, 7 February 2006. For the text of the Convention, see United Nations Juridical Yearbook 2006, United Nations Publication, Sales No. E.09.V.1 (ISBN 978–92–1-133670–2), p. 325.

[513] Contained in IMO resolution A.930(22).

b. 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 considered a report of the Correspondence Group on its progress in developing a single model compulsory insurance certificate (single model certificate) to cover all IMO liability and compensation regimes. The Committee held an extensive debate on the relative benefits and drawbacks of both the mandatory and the recommendatory options for a single model certificate.

Some delegations noted that legal certainty could be only achieved by amending all six treaties regulating compulsory insurance, so that the single model certificate would replace the original models regulated in each of them. It was acknowledged, however, that this course of action could only be considered in the long-term and was not without its difficulties, as it would require the renegotiation of six convention texts, only three of which were currently in force.

Bearing in mind these obstacles, the Committee focused its discussions on the short-term alternative, involving the adoption of an IMO Assembly resolution.

In view of the legal and practical issues, in particular, the lack of general consensus required to ensure the effective implementation of the draft resolution, the Committee concluded that, at the moment, it was unable to recommend the adoption of the Assembly resolution proposed by the Correspondence Group, as a short-term solution. Nor was it able, at this point in time, to recommend amending the liability conventions in order to introduce a single model certificate, as a long-term solution.

The Committee concluded that the Group had fulfilled its mandate under the terms of reference drawn up by the Committee at its ninety-fifth session; and that there was, consequently, no need for the Correspondence Group to continue its deliberations.

c. Fair treatment of seafarers in the event of a maritime accident

The Committee noted that no additional responses had been received since its last session, in response to circular letter N0.2825, which had requested that any information concerning cases of mistreatment of seafarers in the event of a maritime accident should be transmitted to IMO or to ILO.

The Committee requested the IMO Secretariat to continue to consult with the ILO Secretariat and with the social partners, to determine the most convenient meeting dates for reconvening the Joint IMO/ILO *Ad Hoc* Expert Working Group on Fair Treatment of Seafarers in the Event of a Maritime Accident.

d. International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001: Implementation of the Convention

The Committee considered a report of the Correspondence Group established by LEG 95 to facilitate further ratifications and to promote harmonized implementation of

the Bunkers Convention,[514] including a draft Assembly resolution at annex thereto on the issuing of Bunkers certificates to bareboat-registered vessels.

A majority of delegations expressed support, in principle, for the draft resolution, which, even if it could not change the legal content of the Convention, was a pragmatic way to resolve the question of responsibility for issuing Bunkers certificates to bareboat-registered vessels; it was noted that the resolution provided the flexible approach needed in view of the possibility of different interpretations of the entitlement to issue the certificate.

For an extensive discussion during which a wide variety of views were expressed in relation to both the precise content of the proposed resolution (including those favouring the issuance of the certificate by the flag State), as well as the form of the resolution, i.e. whether it should be an Assembly resolution or a Legal Committee resolution, the Committee approved a draft Assembly resolution on the issuing of Bunkers certificates to bareboat-registered vessels.

The Committee decided to maintain the Correspondence Group, which would continue to work on the implementation of the Bunkers Convention.

The Assembly adopted the resolution at its twenty-sixth regular session.

e. Piracy: Review of national legislation

The Committee noted the information provided by the Secretariat on national legislation on piracy submitted in response to circular letter N0.2933, and information on developments relating to Working Group 2 (on legal and judicial issues) of the Contact Group on Piracy off the coast of Somalia (CGPCS Working Group 2).

In connection with the information received on national legislation, the Committee noted that only a few countries fully incorporate the definition of piracy, contained in article 101 of the United Nations Convention on the Law of the Sea (UNCLOS),[515] as well as a jurisdictional framework based upon the concept of universal jurisdiction regulated by UNCLOS; in most cases, piracy is not addressed as an independent, separate offence with its own jurisdictional framework, but is subsumed within more general categories of crime, such as robbery, kidnapping, abduction, violence against persons, etc.; in some cases, domestic legislation, rather than defining all the elements of the offence of piracy as part of its criminal law, simply makes reference to piracy as defined by international law, in UNCLOS or otherwise. This generic approach may present obstacles for prosecution and punishment in countries where criminal law requires that all elements of any offence are described in detail in the legislation. While most States parties to the 1988 Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation[516] have legislation in place implementing the compulsory establishment of jurisdiction regulated in article 6.1 of this Convention, the lack of establishment of facultative (or optional) jurisdiction authorized in article 6.2, coupled with the lack of precise rules regulating universal

[514] International Convention on Civil Liability for Bunker Oil Pollution Damage, 23 March 2001, entered into force on 21 November 2008. For the text of the Convention, *United Nations Juridical Yearbook, 2001*, United Nations Publication, Sales No. E.04.V.12, chapter IV B.

[515] United Nations, *Treaty Series*, vol. 1833, p. 3.

[516] United Nations, *Treaty Series,* vol. 1678, p. 201.

jurisdiction, can inevitably lead to loopholes, as a result of which some piracy incidents may remain unpunished.

In connection with the developments in CGPCS Working Group 2, the Committee noted that the Working Group's task was to provide guidance to Contact Group members on legal issues related to the fight against piracy, including the prosecution of suspected pirates. With a view to fulfilling this task, the Working Group had agreed that the way forward was to develop a full set of practical tools (checklists, guidelines, templates, compilations) with the aim of providing support to States and organizations participating in the anti-piracy effort. Generic templates on evidence collection, ship-rider agreements, obtaining flag State consent in cases where a military vessel protection detachment is to be embarked on merchant ships, and memoranda of understanding on the conditions of transfer of suspected pirates, would be placed on the CGPCS website when it is established. The Committee noted the efforts undertaken by IMO and the United Nations Office on Drugs and Crime to ensure that legislative data collected by both organizations was shared and analysed in order to ensure that activities of both organizations did not overlap.

The Committee also noted information on the activities of the CGPCS and the adoption by the Maritime Safety Committee (MSC) of updated guidance and recommendations on the suppression of piracy, including specific guidance on piracy and armed robbery against ships in waters off the coast of Somalia, which include the industry-developed Best Management Practices (MSC.1/Circ.1332). In this connection, the importance of the Djibouti Code of Conduct to repress acts of piracy and armed robbery against ships was highlighted, as well as IMO's determination to implement a programme of capacity-building activities funded through the IMO Djibouti Code Trust Fund.

Several delegations referred to the process of elaboration of new anti-piracy legislation in their countries, with the object of ensuring an effective application of the principle of extra-territoriality.

The Committee commended the work done by IMO, the CGPCS and other organizations in the prevention and punishment of acts of piracy, and expressed satisfaction at the growing number of participants in the Djibouti Code.

f. Technical co-operation activities related to maritime legislation

The Committee noted the list of dissertations and drafting projects concluded by International Maritime Law Institute (IMLI) students in the 2008–2009 academic year and requested the Secretariat to ascertain from IMLI the possibility of obtaining these dissertations and whether any specific policy had been adopted with regard to the choice of dissertation topics so as to maintain a balance between private and public maritime law. The Committee agreed that IMLI should continue submitting the list of dissertations and drafting projects for the Committee's consideration on a regular basis.

The Committee noted the information provided by the Secretariat on technical co-operation activities on maritime legislation from February to July 2009; on activities planned for the 2010-2011 biennium to help implement the Djibouti Code of Conduct; on the inclusion of maritime legislation as one of the subject areas covered by the Impact Assessment Exercise; and the suggestion that States could help to expand the list of experts by mobilizing national legal resources (e.g., graduates from IMLI).

The Committee commended IMO's enhanced capacity-building efforts, in particular those related to IMLI and World Maritime University (WMU) students.

(iii) *Other business*

a. Proposed new work programme item to consider amendments to LLMC 96 to increase limits of liability under the Bunkers Convention

The Committee agreed to the inclusion of a new work programme item and planned output for the next biennium (2010–2011) on consideration of amendment of the limits of liability of the 1996 Protocol to amend the Convention on Limitation of Liability for Maritime Claims (LLMC 96),[517] in accordance with the tacit amendment procedures set out in article 8 and to place this item on its agenda for its ninety-seventh session. The Committee did not, however, agree to include on the new work programme item an assessment of whether the current provisions under the LLMC 96 remain relevant, on the grounds that no compelling need had been established and that a broad assessment might lead to unforeseen consequences for the Nairobi Wreck Removal Convention,[518] because the LLMC 96 allows States Parties to reserve the right to exclude the application of certain claims, including those relating to wreck removal.

b. Joint IMO/ILO working group on areas of common interest

The Committee agreed with the conclusion reached by the MSC and the Marine Environment Protection Committee (MEPC) to the effect that a standing joint IMO/ILO working group should not be established and that a joint group should be established on an *ad hoc* basis only as and when an issue for consideration and advice to the respective parent bodies of the two Organizations arose, with terms of reference being prepared by the Legal Committee and forwarded for joint approval by it and the Governing Body of ILO, and with selection of membership being based on the subject matter at issue.

c. Places of refuge

The Committee noted document LEG 95/9, introduced by the observer delegation of *Comité Maritime International* (CMI), setting out the principal policy issues addressed by a draft text of an instrument on places of refuge developed by the CMI International Working Group.

However, all the delegations that spoke, although expressing their appreciation to CMI for the high quality of the draft treaty and its contribution in general to the Committee's work, restated the view that there was no need for a new convention at this point in time, since the international regime comprising the existing liability and compensation

[517] Protocol of 1996 to Amend the Convention on the Limitation of Liability for Maritime Claims of 1976, London, 2 May 1996. Entered into force on 13 May 2004. For the text of the Convention, see *United Nations Juridical Yearbook, 1996*, United Nations publication, Sales No. E.01.V.10, chapter IV B.

[518] Nairobi International Convention on the Removal of Wrecks, adopted by the International Conference on the Removal of Wrecks, Nairobi, 18 May 2007, (LEG/CONF.16/19). For the text of the Convention, see the *United Nations Juridical Yearbook, 2007*, United Nations Publication, Sales No. E.10.V.1, p. 330.

conventions for pollution damage at sea provided a comprehensive legal framework, especially when coupled with the Guidelines on places of refuge adopted pursuant to resolution A.949(23) and other regional agreements. Priority should instead be given to enhancing the implementation of existing conventions, which apply in these situations. Once all of these conventions had entered into force and their effectiveness had been assessed, the Committee would be in a better position to ascertain the existence of possible gaps.

The Committee decided not to develop a binding instrument on places of refuge at this stage.

(*c*) Amendments to treaties

(i) *2009 amendments to the Convention on Facilitation of International Maritime Traffic, 1965*[519]

These amendments were adopted by the Facilitation Committee on 16 January 2009, by resolution FAL.10(35). At the time of their adoption, the Committee determined that the amendments shall enter into force on 15 May 2010 unless, prior to 15 February 2010, at least one-third of the Contracting Governments to the Convention have notified the Secretary-General in writing that they do not accept the amendments. As at 31 December 2009, no such notification of objection had been received.

(ii) *2009 amendments to the International Convention for the Safety of Life at Sea, 1974 (SOLAS)*[520] *(chapters II-1 and VI)*

These amendments were adopted by the Maritime Safety Committee on 5 June 2009, by resolution MSC.282(86). At the time of their adoption, the Committee determined that the amendments shall be deemed to have been accepted on 1 July 2010 and shall enter into force on 1 January 2011 unless, prior to 1 July 2010, 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 to the Organization their objections to the amendments. As at 31 December 2009, no such notification of objection had been received.

(iii) *2009 amendments to the Protocol of 1988*[521] *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 5 June 2009, by resolution MSC.283(86). At the time of their adoption, the Committee determined that the amendments shall be deemed to have been accepted on 1 July 2010 and shall enter into force on 1 January 2011 unless, prior to 1 July 2010, more than one-third of the Contracting Governments to the 1988 SOLAS Protocol, or Contracting Governments, the combined merchant fleets of which constitute not less than 50 per cent of the gross tonnage of the

[519] United Nations, *Treaty Series,* vol. 591, p. 265.

[520] *Ibid.*, vol. 1184, p. 2.

[521] *Ibid.,* vol. 1566, p. 401.

world's merchant fleet, have notified to the Organization their objections to the amendments. As at 31 December 2009, no such notification of objection had been received.

(iv) *2009 amendments to the Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships (MARPOL), 1973*[522] *(addition of a new chapter 8 to MARPOL Annex I and consequential amendments to the Supplement to the IOPP Certificate, Form B)*

These amendments were adopted by the Marine Environment Protection Committee on 17 July 2009 by resolution MEPC.186 (59). At the time of their adoption, the Committee determined that the amendments shall be deemed to have been accepted on 1 July 2010 and shall enter into force on 1 January 2011 unless, prior to 1 July 2010, not less than one-third of the Parties to MARPOL 73/78 or Parties, the combined merchant fleets of which constitute not less than 50 per cent of the gross tonnage of the world's merchant fleet, have notified to the Organization their objections to the amendments. As at 31 December 2009, no such notification of objection had been received.

(v) *2009 amendments to the Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships, 1973 (regulations 1, 12, 13, 17 and 38 of MARPOL Annex I, Supplement to the IOPP Certificate and Oil Record Book Parts I and II)*

These amendments were adopted by the Marine Environment Protection Committee on 17 July 2009 by resolution MEPC.187(59). At the time of their adoption, the Committee determined that the amendments shall be deemed to have been accepted on 1 July 2010 and shall enter into force on 1 January 2011 unless, prior to 1 July 2010, not less than one-third of the Parties to MARPOL 73/78 or Parties, the combined merchant fleets of which constitute not less than 50 per cent of the gross tonnage of the world's merchant fleet, have notified to the Organization their objections to the amendments. As at 31 December 2009, no such notification of objection had been received.

5. World Health Organization

(*a*) Constitutional developments

No new member states joined the World Health Organization (WHO) in 2009.

No new amendments to the Constitution[523] of the WHO were proposed or adopted, and neither of the two current amendments entered into force. The current amendments are 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 WHO 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 WHA3

[522] United Nations, *Treaty Series*, vol. 1340, p. 61.

[523] *Ibid.*, vol. 14, p. 185.

LI 8 of 18 May 1978. Respectively, they have been accepted by 98 and 112 member States. Amendments shall come into force for all Members when adopted by two-thirds vote of the Health Assembly and accepted by two-thirds of the Members in accordance with their respective constitutional processes.

(*b*) Other normative developments and activities

(i) *International Health Regulations (2005) (IHR (2005) or the Regulations)*

IHR (2005) did not come into force for any new States parties.

There are 194 States parties to the IHR (2005). In 2009, WHO published a manual for the Public Health Management of Chemical Incidents[524] to help Member States meet the Regulations' core capacity needs relating to chemical incidents.

During 2009, regarding the H1N1 pandemic of 2009, the Director-General of the WHO convened the first meeting of the IHR Emergency Committee, in accordance with article 48 of the IHR. Additionally, the Director-General declared the first public health emergency of international concern, in accordance with article 12, article 49, and annex 2. In accordance with articles 15–18, and article 49, the WHO produced over 30 individual documents containing recommendations and guidelines to prevent and contain the spread of H1N1 pandemic virus. In addition, in accordance with article 13, the WHO Secretariat provided public health guidance and direct technical support, including field missions. The WHO also collaborated with other international and intergovernmental organizations, in accordance with article 14 of the Regulations, especially with the aviation industry and the International Civil Aviation Organization (ICAO) during the H1N1 pandemic (2009). As a result of the emergence of Pandemic (H1 N1) 2009 virus, the six WHO regional offices provided technical guidance to all countries to help improve their national surveillance and response systems to meet the IHR (2005) core capacity requirements by 2012. Finally, for the first time, article 43 "Additional Health Measures" was brought into play, and certain Member States provided reports of measures that could significantly interfere with international travel and trade.

(ii) *Amendments to Basic Documents*

The Sixty-second World Health Assembly, by resolution WHA62.6 of 21 May 2009, decided to amend the Financial Regulations and Financial Rules. This resolution approved the amendments confirmed by the Executive Board during their one hundred and twenty-fourth meeting. The amendments significantly revised the Financial Regulations to bring them into line with the United Nations System Accounting Standards. Specific amendments were made to regulations: 1.3 (Applicability and Delegation of Authority); 2.1 (The Financial Period); 3.1 (The Budget); 4.2, 4.4, 4.5, 4.6, 4.7 (Regular Budget Appropriations); 5.1—5.4 (Provision of Regular Budget Funds); 6.8, 6.11 (Accessed Contributions); 8.1–8.5 (Miscellaneous and other Income); 10 (Custody of Funds); 11.1–11.2 (Investment of Funds); 13.1–13.4 (Accounts and Financial Reports); and 14.4 (External Audit).

[524] Manual for the public health management of chemical incidents. Available on WHO's website, http://www.who.int/environmental_health_emergencies/publications/en/.

The amendments revised the following rules: 103.1 (Regular Budget Appropriations); 104.3–104.6 (Financing); 5 (Funding from Awards for Workplans); 106.1–106.5 (Expenditure Commitments); 108.1–108.2 (The Accounts); 9 (Financial Statements); 110.1–110.6 (Property, Plant and Equipment); and 112.3 (d) (Internal Audit).

The sixty-second World Health Assembly, by resolution WHA62.7 of 21 May 2009, decided to amend the Staff Regulations. Staff regulation 4.2, regarding the paramount consideration of the 'necessity of securing the highest standards of efficiency, competence, and integrity,' was amended to also apply to reassignment. Staff regulation 4.3 was amended to ensure the continued ability of the Organization to transfer or reassign staff members without promotion when it is in the interests of the Organization to do so. This resolution approved the amendments confirmed by the Executive Board during their one hundred and twenty-fourth meeting.

The Executive Board, through resolution EB124.R10, recommended the Health Assembly approve the amendments to the Financial Regulations and Financial Rules.

The Executive Board, through resolution EB124.R14, confirmed amendments to Staff Rules made by the Director-General. It also recommended amendments to Staff Regulations resolution EB124.R 15.

The Executive Board, through resolution 124.R11, admitted into official relations with the WHO the International Medical Corps. This was in agreement with the 'Principles Governing Relations Between the World Health Organization and Nongovernmental Organizations.'

(iii) *Intergovernmental Working Group on Public Health, Innovation, and Intellectual Property*

The Sixty-second World Health Assembly, through resolution WHA62.16, adopted the final plan of action by incorporating into the plan of action additional agreed stakeholders, and proposed time frames. The Health Assembly also accepted the proposed progress indicators and requested the Director-General to provide significantly increased support for greater efficiency and effectiveness in implementation of the global strategy and plan of action.

(iv) *Agreement with the Russian Federation*

The WHO entered into a mutual cooperative agreement with the Russian Federation. The cooperation between the two entities may consist of the Organization making available services of advisers to provide advice to Russian state organizations, organize and conduct seminars, training programmes, demonstration projects, expert working groups and related activities, awarding and financing fellowships for postgraduate training outside the Russian Federation, preparing and executing pilot projects, tests, experiments or research, and other forms of technical advisory cooperation. The Russian Federation agreed to facilitate the effective development of technical advisory cooperation such as gathering or compiling information, publication of any relevant findings, and supporting the Organization in regards to labour, services, supplies and equipment, as required, and

the provision of medical assistance and hospital care to Organization staff on the territory of the Russian Federation.

(v) *Supporting National Law Reform Efforts on WHO Mandated Topics*

In 2009, WHO supported mental health law reform efforts in Bangladesh and Fiji, through the provision of in-depth technical reviews of several drafts of these countries' mental health bills.

WHO completed a systematic and detailed study of 187 national constitutions regarding whether the constitutions included access to essential medicines as part of the realization of the right to health, which is a core country progress indicator of Strategic Objective 11 in the WHO Medium Term Strategic Plan for 2008–2013. Although 135 constitutions recognize one or more aspects of the right to health, only four constitutions specifically include the provision of essential medical products. Based on this review, a model text for revising national constitutions in this respect is in preparation.

In 2009, Reproductive Health and Research (RHR) provided four expert opinions on abortion, family planning, and adolescents' sexual and reproductive health to assist national legislative processes, at the request of WHO country offices and various national stakeholders. RHR developed a human rights and sexual and reproductive health tool that provides a method for countries to use a human rights framework to identify and address legal, policy and regulatory barriers to people's access to, and use of, sexual and reproductive health care services, and to the provision of quality services. RHR provides technical support and briefings to WHO country staff, to ensure that sexual and reproductive health issues are well covered in the United Nations Country Team reports to the Committee on the Elimination of Discrimination against Women (the CEDAW Committee). RHR is actively assisting the Committee on Economic, Social and Cultural Rights in the elaboration of a new General Comment on sexual and reproductive health. RHR provided technical opinion to an individual case being considered by the CEDAW Committee on maternal mortality in Brazil.

The WHO Department of HIV/AIDS participated in an International Task Team on HIV-Related Travel Restrictions that produced a report, which is included in the bibliography, on the lack of public health evidence for the imposition by states of HIV-related restrictions on entry, stay and residence for people living with HIV.

(vi) *WHO Framework Convention on Tobacco Control*[525]

In 2009, the following States became parties to the WHO Framework Convention on Tobacco Control (FCTC): Bosnia and Herzegovina, Gabon, Guinea-Bissau, Liberia, Republic of Moldova, Sierra Leone, and Suriname. There were 167 parties to the Convention at the end of 2009.

The Intergovernmental Negotiating Body (INB) on a Protocol on Illicit Trade in Tobacco Products, established by the Conference of the parties of the FCTC in 2007, held its third session in Geneva from 28 June to 6 July 2009. Representatives of more than 135

[525] United Nations, *Treaty Series* , vol. 2302, p. 166.

parties participated in the session, which resulted in a summary document, the Negotiating text for a protocol to eliminate illicit trade in tobacco products. The document forms the basis for further negotiations and reflects the status of the discussion reached at the third session of the INB.

The INB requested intersessional work to be undertaken regarding several parts of the negotiating text prior to its fourth session in order to facilitate further negotiations which was achieved by the drafting groups established by the INB. The INB is expected to submit the draft of the Protocol to the fourth session of the Conference of the Parties (COP4) to be held in November 2010 in Uruguay. The COP4 is also expected to consider several guidelines for implementation of the Convention, the elaboration of which by intergovernmental working groups started in the second half of 2009.

6. International Atomic Energy Agency

(*a*) Membership

In 2009, Bahrain, Burundi, Cambodia, Congo, Lesotho and Oman became member States of the International Atomic Energy Agency (IAEA). By the end of the year, there were 151 member States.

(*b*) Privileges and immunities

In 2009, Bosnia and Herzegovina and Tajikistan became parties to the Agreement on the Privileges and Immunities of the IAEA.[526] By the end of the year, there were 81 parties.

(*c*) Legal instruments

(i) *Convention on the Physical Protection of Nuclear Material*[527]

In 2009, the Dominican Republic, Jordan, Niue and Saudi Arabia became parties to the Convention. By the end of the year, there were 142 Parties.

(ii) *Amendment to the Convention on the Physical Protection of Nuclear Material*

In 2009, Antigua and Barbuda, Chile, China, Estonia, Jordan, Liechtenstein, Lithuania, Niger, Norway, Slovenia and the United Arab Emirates adhered to the Amendment. By the end of the year, there were 33 contracting States.

[526] *Ibid.*, vol. 374, p. 147.

[527] United Nations, *Treaty Series*, vol. 1456, p. 124.

(iii) *Convention on Early Notification of a Nuclear Accident*[528]

In 2009, the Libyan Arab Jamahiriya, Mozambique, Oman and Senegal became parties to the Convention. By the end of the year, there were 106 parties.

(iv) *Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency*[529]

In 2009, Mozambique, Oman and Senegal became parties to the Convention. By the end of the year, there were 104 parties.

(v) *Convention on Nuclear Safety*[530]

In 2009, Jordan, the Libyan Arab Jamahiriya, Senegal and the United Arab Emirates became parties to the Convention. By the end of the year, there were 66 parties.

(vi) *Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management*[531]

In 2009, Georgia, Portugal, Senegal, the United Arab Emirates and Uzbekistan became parties to the Joint Convention. By the end of the year, there were 51 parties.

(vii) *Vienna Convention on Civil Liability for Nuclear Damage*[532]

In 2009, Senegal became parties to the Convention. By the end of the year, there were 36 parties.

(viii) *Protocol to Amend the Vienna Convention on Civil Liability for Nuclear Damage*[533]

In 2009, 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*[534]

In 2009, Uruguay became party to the Joint Protocol. By the end of the year, there were 26 parties.

---

[528] *Ibid.*, vol. 1439, p. 275.

[529] *Ibid.*, vol. 1457, p. 133.

[530] *Ibid.*, vol. 1963, p. 293.

[531] *Ibid.*, vol. 1963, p. 293.

[532] United Nations, *Treaty Series,* vol. 1063, p. 266.

[533] *Ibid.,* vol. 2241, p. 270.

[534] *Ibid.*, vol. 1672, p. 293.

(x) *Convention on Supplementary Compensation for Nuclear Damage*[535]

In 2009, the status of the Convention remained unchanged with 4 contracting States.

(xi) *Optional Protocol Concerning the Compulsory Settlement of Disputes*[536]

In 2009, the status of the Protocol remained unchanged with 2 parties.

(xii) *Revised Supplementary Agreement Concerning the Provision of Technical Assistance by the IAEA (RSA)*[537]

In 2009, Bosnia and Herzegovina and Mauritania concluded the RSA Agreement. By the end of the year, there were 111 member States which had concluded the RSA Agreement with the Agency.

(xiii) *Fourth Agreement to Extend the 1987 Regional Co-operative Agreement for Research, Development and Training Related to Nuclear Science and Technology (RCA)*[538]

In 2009, Australia and Thailand became party to the Agreement. By the end of the year, there were 15 parties.

(xiv) *African Regional Co-operative Agreement for Research, Development and Training Related to Nuclear Science and Technology (AFRA)—(Third Extension)*[539]

In 2009, Côte d'Ivoire, Mozambique and Zambia became parties to the Agreement. By the end of the year, there were 33 parties.

(xv) *Co-operation Agreement for the Promotion of Nuclear Science and Technology in Latin America and the Caribbean*[540] *(ARCAL)*

In 2009, Colombia, Nicaragua and Paraguay became parties to the Agreement. By the end of the year, there were 18 parties.

---

[535] INFCIRC/567.

[536] United Nations, *Treaty Series*, vol. 2086, p. 94.

[537] *INFCIRC/267.*

[538] INFCIRC/167/Add.22.

[539] INFCIRC/377 and INFCIRC/377/Add.18 (Third Extension).

[540] INFCIRC/582.

(xvi) *Co-operative Agreement for Arab States in Asia for Research, Development and Training Related to Nuclear Science and Technology*[541] *(ARASIA)*

In 2009, the status of the Agreement remained unchanged with 7 parties.

(xvii) *Agreement on the Establishment of the ITER International Fusion Energy Organization for the Joint Implementation of the ITER Project*[542]

In 2009, 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*[543]

In 2009, the status of the Agreement remained unchanged with 6 parties.

(*d*) IAEA legislative assistance activities

During 2009, IAEA saw an increase in the demand for legislative assistance emanating from its member States. In response to this demand, IAEA provided bilateral assistance to 24 countries by means of written comments and advice in drafting national nuclear legislation and regulations. In addition, at the request of member States, individual training was also provided at IAEA Headquarters to seven individuals, notably through short-term scientific visits, as well as longer-term fellowships allowing individuals to gain further practical experience in international nuclear law.

In parallel, IAEA continued to take part in academic activities oriented towards nuclear law such as those organized under the auspices of the World Nuclear University and the International School of Nuclear Law by providing lecturers and by funding a total of 18 participants through appropriate IAEA technical cooperation projects.

Also, a total of six international and regional workshops were organized by the IAEA, both at IAEA Headquarters in Vienna and abroad.

In particular, IAEA conducted three international workshops on nuclear law at IAEA Headquarters. The purpose of these workshops was to provide participants with a comprehensive overview of the international legal instruments adopted under the auspices of IAEA, covering nuclear safety, nuclear security, safeguards and civil liability for nuclear damage,[544] as well on basic requirements needed for the establishment of adequate national legislation incorporating the provisions of the aforementioned instruments.

More specifically in the field of nuclear security, IAEA organized in May 2009 a workshop on implementing legislation in nuclear security for senior government officials from the League of Arab States countries at IAEA Headquarters. The purpose of the workshop

[541] INFCIRC/613/Add.1.

[542] INFCIRC/702.

[543] INFCIRC/703.

[544] United Nations, *Treaty Series,* vol. 1063, p. 265.

was to provide participants with in-depth information on the international instruments governing nuclear security and the synergies with safeguards. Further, IAEA organized at its Headquarters another workshop focused on implementing the Convention on the Physical Protection of Nuclear Material[545] and its Amendment in December.

In the field of civil liability for nuclear damage, the IAEA organized in December 2009 a workshop in Abu Dhabi, United Arab Emirates, for countries having expressed an interest in launching a nuclear power programme. The main purpose of the workshop was to provide information on the existing international liability regime, in particular the international instruments adopted under the auspices of the IAEA, including the Protocol to Amend the Vienna Convention on Civil Liability for Nuclear Damage and the Convention on Supplementary Compensation for Nuclear Damage.

(*e*) Convention on nuclear safety

(i) *First Extraordinary Meeting of Contracting Parties, 28 September 2009*

In September 2009, the First Extraordinary Meeting of the Contracting Parties to the Convention on Nuclear Safety (CNS) was held at IAEA Headquarters to discuss and agree on certain changes to the 'Guidelines Regarding National Reports under the Convention' proposed by the 'Working Party on National Reports'—an *ad hoc* body composed of representatives of the Contracting Parties—as a result of recommendations reached at the Fourth Review Meeting held in April 2008.

In addition, the contracting parties which had expressed during the Fourth Review Meeting the need to work further on promoting a better understanding of the CNS among both Contracting and non–Contracting Parties—and possibly as a result a wider adherence to the CNS—endorsed a promotional brochure titled 'Introduction to the Convention on Nuclear Safety and its associated Rules of Procedures and Guidelines.' The brochure would constitute an additional tool in IAEA's outreach activities in the field of nuclear safety.

(ii) *Fifth Organizational Meeting of Contracting Parties, 29 September 2009*

In conjunction with the Extraordinary Meeting, an Organizational Meeting of the Contracting Parties to the CNS was held in preparation for the Fifth Review Meeting scheduled for April 2011 in Vienna, with 46 of the 65 Contracting Parties participating.

In accordance with the Rules of Procedure and Financial Rules of the CNS, the primary purpose of the meeting was to elect the Officers of the Review Meeting (President, Vice-Presidents and Country Group Officers) and to allocate contracting parties to country groups. The meeting also considered some of the proposals forwarded by the Contracting Parties aiming at enhancing the review process. The proposals included among others the development of processes to enhance the variation of country group composition and to engage national contact points in the review process, as well as considering creating a process for topical issue discussion between Review Meetings. It was also considered that

[545] *Ibid.*, vol. 1456, p. 101.

developing guidance for the contracting parties' review of other national reports might further improve the peer review process.

(*f*) Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management[546]

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 (the Joint Convention) was held in May 2009 in Vienna. Forty-five of the 48 contracting parties participated. Observers included the Nuclear Energy Agency of the Organization for Economic Cooperation and Development (OECD/NEA) and the European Bank for Reconstruction and Development (EBRD). The participants conducted a thorough peer review of the contracting parties' national reports and the conclusion was that all contracting parties in attendance were in compliance with requirements of the Convention and that the safety performance in each contracting party remained strong.

In addition, the Review Meeting adopted a number of recommendations submitted for its consideration by the Open-Ended Working Group established by the Contracting Parties at the beginning of the Review Meeting. In particular, the approved changes dealt with the general organization of the review process, including *inter alia* improving and clarifying the selection process for officers of the Joint Convention, allocating more time for the review of the contracting parties' national reports prior to the start of the Review Meeting, as well as improving the peer review process by maintaining institutional knowledge and continuity of officers between Review Meetings. It also requested the IAEA Secretariat to establish continuity and ongoing dialogue between Review Meetings among the contracting parties and General Committee members.

A further proposal was made for a meeting to be organised between the General Committees of both the Joint Convention and the Convention on Nuclear Safety in order to exchange views on common issues for improving the peer review process.

While welcoming the positive conclusions of the Review Meeting, contracting parties emphasized the need to remain diligent and vigilant in order to avoid complacency in the future.

(*g*) Code of Conduct on the Safety and Security of Radioactive Sources[547]

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 objectives of the Code of Conduct are to achieve and maintain a high level of safety and security of radioactive sources. The number of commitments by States to work towards following the provisions of the Code increased to 95 States as of the end of 2009. Fifty-

[546] United Nations, *Treaty Series*, vol. 2153, p. 303.

[547] Approved by the Board of Governors of the International Atomic Energy Agency on 8 September 2003, (GC(47)/9).

three States also notified their commitment to follow the Supplementary Guidance on the Import and Export of Radioactive Sources.

A technical meeting on implementation of the Code of Conduct with regard to long term strategies for the management of sealed sources was held in Vienna from 29 June to 1 July 2009. The meeting was attended by 75 experts from 51 member States as well as observers from the European Commission and the International Source Suppliers and Producers Association (ISSPA).

The objective of the meeting was to discuss certain legal and technical issues and possible strategies related to the management of sealed sources, in particular when these sources are reaching the end of their life cycle, or when orphan sources are detected at borders or during transport. Constructive discussions were held aiming at the establishment of harmonized strategies based on a more effective communication and cooperation among States, regulators, suppliers, shippers, users and waste management organizations.

The complementary nature of the Code of Conduct and the Joint Convention on the issue of the management of disused sources and orphan sources once they are designated as radioactive waste was also noted under the heading of possible strategies for internationally agreed and harmonized management of disused and orphan sources.

(*h*) Safeguards agreement

During 2009, a Safeguards Agreement pursuant to the Treaty on the Non-Proliferation of Nuclear Weapons[548] (NPT) with Bahrain, the Central African Republic, Comoros, Kenya, Mauritania, Qatar, Saudi Arabia and Sierra Leone entered into force. An Agreement between the Government of India and the International Atomic Energy Agency (IAEA) for the Application of Safeguards to Civilian Nuclear Facilities also entered into force in 2009. In addition, Bulgaria and the Czech Republic acceded to the Safeguards Agreement between the IAEA, European Atomic Energy Community (Euratom) and the non-nuclear-weapon States of Euratom. A Safeguards Agreement pursuant to the NPT was signed by Chad, Rwanda and Timor Leste but had not entered into force as of December 2009. Safeguards Agreements with the Republic of the Congo, Djibouti and Vanuatu pursuant to the NPT were approved by the IAEA Board of Governors in 2009.

In 2009, Protocols Additional to the Safeguards Agreements between IAEA and the Central African Republic, Colombia, Comoros, Kenya, Mauritania and the United States of America entered into force. In addition, Bulgaria and Czech Republic acceded to the Protocol Additional to the Safeguards Agreement between the IAEA, Euratom and the non-nuclear weapon States of Euratom. Additional Protocols were signed by Chad, Rwanda, Serbia, Timor-Leste, the United Arab Emirates and Zambia, but had not entered into force as of December 2009. A Protocol Additional to the Agreement between the Government of India and IAEA for the Application of Safeguards to Civilian Nuclear Facilities was also signed but had not entered into force as of December 2009. Additional Protocols with Bahrain, the Republic of the Congo, Djibouti and Vanuatu were approved by the IAEA Board of Governors in 2009.

[548] United Nations, *Treaty Series*, vol. 729, p. 161.

7. United Nations Industrial Development Organization

(*a*) Agreements and other arrangements concluded in 2009 with States[549]

(i) Belgium

Agreement between the United Nations Industrial Development Organization and the Flemish Government—Department of Economy, Science and Innovation regarding the implementation of a project entitled 'Facilitator mechanism for the establishment of an international industrial biotechnology network (phase 1),' signed on 9 July 2009.

(ii) *Botswana*

Standard letter of agreement between the Government of Botswana and the United Nations Industrial Development Organization under national execution regarding the implementation of a project in Botswana entitled 'Review of the industrial development policy,' signed on 6 November and 11 December 2009.

(iii) *Cameroon*

Agreement between the United Nations Industrial Development Organization and the Government of the Republic of Cameroon relating to the establishment and management of a trust fund for implementation of the project to improve the productivity and competitiveness of the palm oil sector in Central and West Africa, signed on 10 December 2009.

(iv) *Canada*

Grant arrangement between the Government of Canada and the United Nations Industrial Development Organization regarding the implementation of a project in Sudan entitled 'Recovery of coastal livelihoods in the Red Sea State of Sudan—the modernization of artisanal fisheries and creation of new market opportunities,' signed on 19 March 2009.

Contribution agreement respecting the implementation of the project entitled 'Terminal phase-out of methyl bromide in Mexico, structures component, phase I,' between Her Majesty the Queen in Right of Canada and the United Nations Industrial Development Organization, signed on 17 and 24 August 2009.

(v) *China and the Nantong Pesticide Formulation Centre*

Trust fund agreement between the United Nations Industrial Development Organization and the Government of the People's Republic of China and the Nantong Pesticide Formulation Centre regarding the implementation of a project entitled 'Reduction of chemical pesticides production and promotion of non-DDT formulations based on biopesticides and water-based formulations using capsule suspension technology,' signed on 8 and 29 October 2008, and 21 April 2009.

[549] Including governmental agencies and regional governments or provinces.

(vi) *Colombia and the Corporación Centro Provincial de Gestión Minero Agroempresarial del Alto Nordeste Antioqueño*

Trust fund agreement between the United Nations Industrial Development Organization and the Corporación Centro Provincial de Gestión Minero Agroempresarial del Alto Nordeste Antiqueño regarding the implementation of a project entitled 'Project Global Mercury 2—Introduction of cleaner artisanal gold mining and extraction technologies,' signed on 20 May 2009.

(vii) *Comoros and the United Nations system*

Joint declaration of the Government of the Union of the Comoros and the United Nations system regarding the co-piloting of implementation of the 'Delivering as One' initiative, signed on 25 May 2009.

(viii) *Cuba*

Exchange of letters constituting an agreement between the Ministry of Foreign Trade and Investment of Cuba and the United Nations Industrial Development Organization regarding the UNIDO Focal Point in Cuba, dated 28 July and 10 August 2009.

(ix) *Egypt and the United Nations Environment Programme (UNEP)*

Implementation agreement between the United Nations Environment Programme and the United Nations Industrial Development Organization and the Ministry of Trade and Industry of the Government of Egypt for the project entitled 'Assessment and capacity-building in chemicals waste management in Egypt,' signed on 25 March and 20 April 2009.

(x) *El Salvador and the United Nations Environment Programme (UNEP)*

Implementation agreement between the United Nations Environment Programme and the United Nations Industrial Development Organization and the Government of the Republic of El Salvador, represented by its Ministry of Foreign Affairs, for the project entitled 'Life cycle analysis of chemical substances,' signed on 24 March and 3 April 2009.

(xi) *Finland*

Exchange of letters constituting an agreement between the Ministry for Foreign Affairs of Finland and the United Nations Industrial Development Organization on the utilization of the Finnish contribution to UNIDO in the year 2009, signed on 27 October and 16 November 2009.

(xii) *Gabon*

Agreement between the United Nations Industrial Development Organization and the Government of Gabon relating to the establishment of a trust fund for the implementation in Gabon of a project entitled 'Assistance in supporting the diversification of and innovation and investment in small and medium enterprises in Gabon (in two phases),' signed on 9 December 2009.

(xiii) *Germany*

Arrangement between the United Nations Industrial Development Organization and the Government of the Federal Republic of Germany regarding the implementation of a project entitled 'Promotion and implementation of chemical leasing business models in industry,' signed on 21 and 28 April 2009.

Exchange of letters constituting an agreement between the Government of the Federal Republic of Germany and the United Nations Industrial Development Organization regarding the implementation of a project in Iraq entitled 'Promotion of micro-industries for accelerated and sustainable livelihood recovery—Ninewa Governorate of Iraq,' signed on 7 and 14 October 2009.

(xiv) *India*

Trust fund agreement between the United Nations Industrial Development Organization and the North Eastern Council, Government of India, regarding the implementation of a project entitled 'Promoting livelihoods in North Eastern India: The cane and bamboo networking project,' signed on 29 January 2009.

Agreement between the United Nations Industrial Development Organization and the Government of the Republic of India regarding the establishment of a UNIDO subregional Office in India covering the Islamic State of Afghanistan, the People's Republic of Bangladesh, the Kingdom of Bhutan, the Republic of India, the Republic of Maldives, the Federal Democratic Republic of Nepal and the Democratic Socialist Republic of Sri Lanka, signed on 7 August 2009.

(xv) *Iran (Islamic Republic of)*

Trust fund agreement between the United Nations Industrial Development Organization and the Iran Nanotechnology Initiative Council on behalf of the Government of the Islamic Republic of Iran regarding the implementation of a project in Iran entitled 'Support to the establishment and development of an International Centre on Nanotechnology (ICN),' signed on 25 September 2009.

(xvi) *Iraq*

Joint communiqué by H.E. Mr. Ali Ghaleb Baban, Minister of Planning and Development Cooperation of the Republic of Iraq, and Mr. Kandeh K. Yumkella, Director-Gen-

eral of the United Nations Industrial Development Organization, on the occasion of their meeting in Vienna on 28 May 2009, signed on 28 May 2009.

(xvii) *Italy*

Trust fund agreement between the United Nations Industrial Development Organization and the Government of Italy regarding the implementation of a Montreal Protocol project in Morocco entitled 'Phase-out of methyl bromide used as a soil fumigant in the production of green beans and cucurbits,' signed on 4 December 2008 and 7 January 2009.

Trust fund agreement between the United Nations Industrial Development Organization and the Government of Italy regarding the implementation of a Montreal Protocol project in Serbia entitled 'Terminal CTC phase-out project,' signed on 4 December 2008 and 7 January 2009.

Agreement between the Government of the Italian Republic and the United Nations Industrial Development Organization regarding the implementation of a project in Lebanon entitled 'Development and enterprise investment promotion (EDP) programme,' signed on 30 June and 17 September 2009.

(xviii) *Morocco*

Exchange of letters constituting an agreement between the United Nations Industrial Development Organization and the Government of the Kingdom of Morocco amending the agreement establishing a UNIDO Office in Rabat and the trust fund agreement of 4 October 2004, signed on 15 July and 10 August 2009.

(xix) *Nigeria*

Trust fund agreement between the United Nations Industrial Development Organization and the Government of the Federal Republic of Nigeria regarding the implementation of a project in Nigeria entitled 'The Country Programme,' signed on 19 February 2009.

Agreement between the United Nations Industrial Development Organization and the Government of the Federal Republic of Nigeria regarding the arrangements for the organization of the high-level Conference on the development of agribusiness and agro-industries in Africa, signed on 20 November 2009.

(xx) *Norway*

Administrative agreement for project funding between the Ministry of Foreign Affairs, Norway, and the United Nations Industrial Development Organization regarding the implementation of a project in Sri Lanka entitled 'Sri Lanka National Cleaner Production Centre—phase II,' signed on 16 November 2009.

(xxi) *Peru and the United Nations Environment Programme (UNEP)*

Implementation agreement between the United Nations Environment Programme and the United Nations Industrial Development Organization and the Government of Peru, represented by its Ministry of Health, for the project entitled: 'Safe chemicals,' signed on 9 and 24 March and 11 June 2009.

(xxii) *Russian Federation*

Administrative arrangement between the United Nations Industrial Development Organization and the Government of the Russian Federation with regard to a special-purpose contribution to the Industrial Development Fund, signed on 23 June 2009.

Memorandum of cooperation between the United Nations Industrial Development Organization and the Government of the Republic of Tatarstan (Russian Federation), signed on 10 December 2009.

(xxiii) *South Africa*

Addendum to the trust fund agreement for project TE/RAF/08/013 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 in South Africa entitled 'Infrastructure supplier benchmarking programme for South Africa,' signed on 1 and 2 March 2009.

Project funding agreement between the United Nations Industrial Development Organization and the Department of Trade and Industry of the Government of the Republic of South Africa, regarding the implementation of a project in South Africa entitled 'Automotive component supplier development programme,' signed on 30 March 2009.

Project funding agreement between the United Nations Industrial Development Organization, the Department of Trade and Industry of the Government of the Republic of South Africa and the Department of Energy regarding the implementation of a project in South Africa entitled 'Industrial energy efficiency improvement in South Africa,' signed by UNIDO and the Department of Trade and Industry on 19 June 2009.

(xxiv) *Spain*

Exchange of letters constituting an agreement between the United Nations Industrial Development Organization and the Ministry of Foreign Affairs and Cooperation of Spain regarding the implementation of a Montreal Protocol project in the Libyan Arab Jamahiriya entitled 'Phase-out of methyl bromide in horticulture: tomatoes, cucumbers, peppers and others,' signed on 26 February and 14 April 2009.

Memorandum of understanding between the Government of Spain and the United Nations Industrial Development Organization, regarding the implementation of certain projects in Latin America and the Caribbean, signed on 19 May 2009.

(xxv) *Sudan and the United Nations Environment Programme (UNEP)*

Implementation agreement between the United Nations Environment Programme and the United Nations Industrial Development Organization and the Government of the Sudan, represented by its Higher Council for Environment and Natural Resources, for the project entitled 'Development of a sustainable national programme for sound management of chemicals,' signed on 24 March 2009.

(xxvi) *Switzerland*

Letter of agreement between the State Secretariat for Economic Affairs (SECO) and the United Nations Industrial Development Organization regarding the project UE/SAF/09/002—'Industrial energy efficiency improvement in South Africa,' signed on 20 October 2009.

Letter of agreement between the State Secretariat for Economic Affairs (SECO) and the United Nations Industrial Development Organization regarding the project 'Strengthening of the National Cleaner Production Centre in Tunisia, part I and II,' signed on 20 October 2009.

(xxvii) *Syrian Arab Republic*

Basic cooperation agreement between the United Nations Industrial Development Organization and the Government of the Syrian Arab Republic, signed on 10 December 2009.

(xxviii) *Uganda and the Islamic Development Bank*

Trust fund agreement between the Government of the Republic of Uganda and the Islamic Development Bank and the United Nations Industrial Development Organization regarding the implementation of a project in Uganda entitled 'Feasibility study for mini-hydro power plants to reduce the vulnerability of the poor population to climate change impacts by providing economical empowerment,' signed on 17 October and 15 December 2008 and 1 February 2009.

(xxix) *Zambia*

Working agreement between the United Nations Industrial Development Organization and the Government of Zambia regarding the implementation of a Montreal Protocol project in Zambia entitled 'Technical assistance for the total phase-out of methyl bromide in tobacco, cut flowers, horticulture and post-harvest uses in Zambia,' signed on 24 March and 26 May 2009.

(*b*) Agreements and other arrangements concluded in 2009 with the United Nations, its programmes and offices, and the specialized agencies

(i) *Multilateral agreements and arrangements*

Memorandum of understanding relating to the use of common premises by United Nations agencies, programmes, funds and offices in the Lao People's Democratic Republic, signed by UNIDO on 18 March 2009.

Memorandum of understanding between the United Nations Environment Programme, the United Nations Industrial Development Organization and the United Nations Development Programme regarding the operational aspects of the United Nations China appeal for Wenchuan earthquake early recovery support—environment sector (parts I and II) in China, signed by UNIDO on 9 April 2009.

Aide mémoire between the Food and Agriculture Organization of the United Nations, the International Fund for Agricultural Development, the United Nations Industrial Development Organization and the United Nations Development Programme regarding a joint programme entitled 'Agricultural value chain and agro-processing development programme for the Union of Comoros,' signed on 29 May 2009.

Memorandum of understanding between the United Nations Environment Programme, the United Nations Development Programme, the Food and Agriculture Organization of the United Nations, the United Nations Industrial Development Organization and the United Nations Educational, Scientific and Cultural Organization regarding a One UN joint programme entitled 'Joint programme on environment,' signed by UNIDO on 19 June 2009.

Memorandum of understanding between the participating United Nations organizations and the United Nations Development Programme regarding the operational aspects of the One UN Coherence Fund for Albania, signed by UNIDO on 23 June 2009.

Memorandum of understanding between the United Nations Integrated Peace Mission in Sierra Leone and the agencies represented on the United Nations Country Team regarding United Nations common services, signed by UNIDO on 23 July 2009.

Memorandum of understanding between the International Labour Organization, the United Nations Children's Fund, the United Nations Educational, Scientific, and Cultural Organization, the United Nations Industrial Development Organization and the World Food Programme, regarding a One UN joint programme entitled 'Joint programme—education,' signed by UNIDO in 2009.

(ii) *International Fund for Agricultural Development (IFAD)*

Grant agreement between the International Fund for Agricultural Development and the United Nations Industrial Development Organization regarding the implementation of a project entitled 'Pro poor value chain development tool for practitioners,' signed on 26 and 29 October 2009.

(iii) *International Labour Organization (ILO)*

Inter-agency letter of agreement between the United Nations Industrial Development Organization and the International Labour Organization regarding the implementation of a UNDP-Spanish MDG Achievement Fund project entitled 'Protecting and promoting the rights of China's vulnerable young migrants,' signed on 30 and 31 July 2009.

Inter-agency letter of agreement between the United Nations Industrial Development Organization and the International Labour Organization regarding the implementation of a project in China entitled 'Sustaining competitive and responsible enterprises (SCORE)—China,' signed on 19 August 2009.

United Nations Economic and Social Commission for Asia and the Pacific (ESCAP) Memorandum of understanding between the Economic and Social Commission for Asia and the Pacific and the United Nations Industrial Development Organization, signed on 14 October and 4 November 2009.

(iv) *United Nations*

Agreement between the United Nations and the United Nations Industrial Development Organization regarding the implementation of a project in Indonesia entitled 'Realizing minimum living standards for disadvantaged communities through peacebuilding and village-based economic development,' signed on 31 December 2008 and 6 February 2009.

Agreement between the United Nations and the United Nations Industrial Development Organization regarding the implementation of a project in Armenia entitled 'Sustainable livelihood for socially vulnerable refugees, internally-displaced and local families,' signed on 3 and 19 March 2009.

Agreement between the United Nations and the United Nations Industrial Development Organization regarding the joint programme entitled 'United Nations joint programme on integrated highland livelihood development in Mae Hong Son,' signed on 7 and 28 October 2009.

Agreement between the United Nations and the United Nations Industrial Development Organization regarding the implementation of a project in Ghana entitled 'Enhancing human security through developing local capacity for holistic community-based conflict prevention in northern Ghana,' signed on 31 May and 24 November 2009.

(v) *United Nations Development Programme (UNDP)*

Exchange of letters between the United Nations Development Programme in Viet Nam and the United Nations Industrial Development Organization as co-convener of programme coordination group 2: Trade, employment and enterprise development, signed on 10 September 2009.

(vi) *United Nations Office for Projects Services (UNOPS)*

Memorandum of understanding between the United Nations Industrial Development Organization and the United Nations Office for Project Services on collaborative arrange-

ments in the EIF programme regarding the implementation of the enhanced integrated programme for trade-related technical assistance to least developed countries, signed on 24 June 2009.

(*c*) Other intergovernmental organizations

(i) *European Community (EC) and European Union (EU)*

Memorandum of understanding No. 31298 between the Institute for Energy and the United Nations Industrial Development Organization on scientific cooperation in the field of fuel cells, signed on 17 March and 1 April 2009.

European Community contribution agreement between the European Community and the United Nations Industrial Development Organization on trade-related technical assistance, signed on 6 November 2009.

Addendum No. 1 to contribution agreement No. ASIE/2005/107894 between the European Union and the United Nations Industrial Development Organization regarding component 1 of the Bangladesh quality support programme concluded on 17 November 2005, signed on 20 and 24 December 2009.

(ii) *Eurasian Economic Community (EURASEC)*

Memorandum of cooperation between the United Nations Industrial Development Organization and the Eurasian Economic Community, signed on 19 January 2009.

(iii) *Fund for Commodities (CFC) and the International Jute Study Group*

Project agreement between the International Jute Study Group, the United Nations Industrial Development Organization and the Common Fund for Commodities regarding the implementation of a project entitled 'Increased production efficiency in small-holder kenaf production systems for specific industrial applications,' signed on 5, 9 and 13 March 2009.

(iv) *Islamic Corporation for the Insurance of Investment and Export Credit (ICIEC)*

Trust fund agreement between the United Nations Industrial Development Organization and the Islamic Corporation for the Insurance of Investment and Export Credit regarding the implementation of a project in Uganda entitled 'Investment promotion and technical assistance programme (ITAP) for Uganda,' signed on 9 December 2009.

(v) *Latin American Energy Organization (OLADE)*

Memorandum of understanding between the United Nations Industrial Development Organization and the Latin American Energy Organization, signed on 16 and 25 February 2009.

(*d*) Other entities

(i) *Austrian Development Agency (ADA)*

Agreement between the United Nations Development Organization and the Austrian Development Agency regarding the implementation of a project of the Economic Commission of West African States (ECOWAS) entitled 'Preparatory and first operational phase of the secretariat of the ECOWAS Regional Center for Renewable Energy and Energy Efficiency (ERC),' signed on 9 and 30 November 2009.

(ii) *Agence Française de Développement (AFD)*

Financial agreement No. CZZ1317.01Z between the United Nations Industrial Development Organization and the French Development Agency regarding the implementation of a Montreal Protocol project in six African countries entitled 'Strategic demonstration project for accelerated conversion of CFC chillers in six African countries (Cameroon, Egypt, Namibia, Nigeria, Senegal and Sudan),' signed on 28 July 2009.

Letter of intent between the United Nations Industrial Development Organization and the French Development Agency, signed on 7 December 2009.

(iii) *Gesellschaft für Technische Zusammenarbeit (GTZ)*

Grant agreement between the United Nations Industrial Development Organization and the Deutsche Gesellschaft für Technische Zusammenarbeit GmbH regarding the international energy conference 'Towards an integrated energy agenda beyond 2020,' signed on 14 August and 16 September 2009.

(iv) *Hewlett-Packard*

Donation agreement between the United Nations Industrial Development Organization and Hewlett-Packard International Sarl regarding the implementation of a project entitled 'UNIDO—Hewlett-Packard cooperation for youth entrepreneurship development in Africa and the Middle East,' signed on 23 January 2009.

(v) *Indian Institute of Technology (IIT), Mahindra and Mahindra Ltd and Air Products*

Memorandum of understanding between the United Nations Industrial Development Organization, represented by the International Centre for Hydrogen Energy Technologies (ICHET), and the Indian Institute of Technology and Mahindra and Mahindra Limited and Air Products regarding the 'Delhy-3W project,' signed on 12 March 2009.

(vi) *International Organization for Standardization (ISO)*

Memorandum of understanding on enhanced cooperation between the United Nations Industrial Development Organization and the International Organization for Standardization, signed on 23 June 2009.

(vii) *Istanbul Transport Executive and others*

Memorandum of understanding between the United Nations Industrial Development Organization, represented by the International Centre for Hydrogen Energy Technologies, and the Istanbul Transport Executive and the Institute of Technology and Güleryüz and Tekno Tasarim AS, signed on 23, 25, 26 and 29 June 2009.

(viii) *Japanese Overseas Development Corporation (JODC)*

Trust fund agreement between the United Nations Development Organization and the Japanese Overseas Development Corporation regarding the implementation of a project in Myanmar, entitled 'Assessment of the potential for micro- and small business development in the handicraft sector in Myanmar,' signed on 18 June 2009.

(ix) *Kuwait Finance House (KFH)*

Memorandum of understanding on cooperation between the United Nations Industrial Development Organization and Kuwait Finance House, signed on 3 February 2009.

(x) *Lao National Chamber of Commerce and Industry*

Letter of agreement between the Lao National Chamber of Commerce and Industry and the United Nations Industrial Development Organization regarding the implementation of the project entitled 'Promoting private sector development through strengthening of Lao Chambers of Commerce and Industry and business associations,' signed on 23 and 30 July 2009.

(xi) *METRO Group*

Joint declaration by Mr. Kandeh K. Yumkella, Director-General of the United Nations Industrial Development Organization, and Mr. Eckhard Cordes, Chairman of the Management Board of METRO AG and CEO METRO Group, signed on 9 December 2009.

(xii) *Michigan State University (MSU)*

Joint declaration by Mr. Kandeh K. Yumkella, Director-General of the United Nations Industrial Development Organization and Mr. Kim Wilcox, Provost of the Michigan State University in East Lansing, Michigan, signed on 16 January 2009.

(xiii) *National Agency for Science and Engineering Infrastructure of Nigeria (NASENI)*

Trust fund agreement between the United Nations Industrial Development Organization and the National Agency for Science and Engineering Infrastructure regarding the implementation of a project in Nigeria entitled 'Technical assistance in fabrication of micro-hydro turbines,' signed on 7 July 2009.

(xiv) *Norwegian Agency for Development Cooperation (Norad)*

Administrative agreement for project funding between the Norwegian Agency for Development Cooperation and the United Nations Industrial Development Organization regarding the implementation of a project entitled 'Implementation of ISO 9001 quality system in Asian developing countries: Survey covering system development, certification, accreditation and economic benefits,' signed on 18 and 23 February 2009.

Administrative agreement for project funding between the Norwegian Agency for Development Cooperation and the United Nations Industrial Development Organization regarding the implementation of a project in Zambia entitled 'Joint UNIDO-WTO trade capacity-building programme framework for Zambia,' signed on 18 and 25 March 2009.

Addendum to administrative agreement for project funding between the Norwegian Agency for Development Cooperation and the United Nations Industrial Development Organization regarding the project 'Technical assistance to business registration reform in Viet Nam,' signed on 13 November 2009.

Administrative agreement for project funding between the Norwegian Agency for Development Cooperation and the United Nations Industrial Development Organization regarding the implementation of a project entitled 'Institutional strengthening of the Intra-Africa Metrology System (AFRIMETS),' signed on 13 and 24 November 2009.

(xv) *OSEC Business Network Switzerland*

Trust fund agreement between the United Nations Industrial Development Organization and OSEC Business Network Switzerland regarding the implementation of a project in Madagascar entitled 'Economic Development Board of Madagascar (EDBM)—capacity-building project for investment promotion and partnership,' signed on 1 and 9 October 2009.

(xvi) *SEQUA GmbH*

Administrative agreement between the United Nations Industrial Development Organization and SEQUA GmbH regarding the implementation of a project of the European Commission in Bangladesh entitled 'Re-Tie Bangladesh: Reduction of environmental threats and increase of exportability of Bangladeshi leather products,' signed on 16 and 25 June 2009.

(xvii) *StEP*

Memorandum of understanding between the members of the 'Solving the E-Waste Problem (StEP) Initiative' and the United Nations Industrial Development Organization, signed on 29 August 2008, 13 and 20 February 2009.

(xviii) *Turkish Association of Automobile Gas Stations (ODIDER)*

Memorandum of understanding between the United Nations Industrial Development Organization, represented by the International Centre for Hydrogen Energy Technologies, and the Association of Automobile Gas Stations, signed on 1 December 2009.

8. World Intellectual Property Organization

(*a*) Introduction

In 2009, the World Intellectual Property Organization (WIPO) continued to address its activities on the implementation of substantive work programs in three main areas: (i) cooperation with its member States for development activities; (ii) intellectual property treaty formulation and norm-setting; and (iii) the international registration of intellectual property rights.

(*b*) Cooperation with Member States for Development Activities

During the period under review, the WIPO technical assistance and capacity building activities continued to be directed towards the integration of Intellectual Property (IP) in national development polices and programs in accordance with WIPO's Strategic Goal Two, created within the framework of the United Nations Millennium Development Goals. The technical assistance program and activities have been designated in close consultation with member States, intergovernmental organizations (IGOs), non-governmental organizations (NGOs), and particularly developing countries and least-developed countries (LDCs), with which an intensified cooperation has been tailored to respond to the diverse and specific needs in important IP areas.

In 2009, substantive legislative and technical assistance was provided in support of national IP building capacity in areas such as: IP infrastructure and exploitation of IP systems; human resources development; information technology; genetic resources, traditional knowledge and folklore and protection of traditional cultural expressions; small and medium-sized enterprises; and the establishment of collective management societies.

Earlier 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 CDIP is composed of the member States of WIPO and open to the participation of all accredited IGOs and NGOs. The Development Agenda Coordination Division (DACD) has been established to serve as the Secretariat

for the CDIP. In 2009, in line with its mandate, the CDIP submitted to the WIPO General Assembly a report on its third session held from 27 April to 1 May, 2009, during which (i) the progress in respect of the 19 proposals under implementation was reviewed and discussed, (ii) the remaining proposals were grouped as three thematic projects—IP and the Public Domain; IP and Competition Policy; and IP, Information and Communication Technologies, the Digital Divide and Access to Knowledge—to be implemented in January 2010, and (iii) the necessary mechanisms for coordinating the work of the Committee with the DACD and other relevant WIPO bodies were considered.

(*c*) Norm-setting activities

One of the principal tasks of WIPO is to promote the harmonization of IP laws, standards, and practices among its Member States through the progressive development of international approaches in the protection and administration of IP rights. In this respect, the three WIPO Standing Committees on legal matters—respectively dealing with patents; copyright and related rights; and trademarks, industrial designs and geographical indications—help Member States to concentrate discussions, coordinate efforts, and establish priorities in these areas.

(i) *Standing Committee on the Law of Patents (SCP)*

At its thirteenth session,[550] held in March 2009, the SCP based its discussions on the Report on the International Patent System,[551] which is intended to provide a framework by which to cover the different needs and interests of Member States, as well as four preliminary studies: (i) Exclusions from Patentable Subject Matter and Exceptions and Limitations to the Rights;[552] (ii) Dissemination of Patent Information;[553] (iii) Standards and Patents;[554] and (iv) The Client-Attorney Privilege.[555] The SCP also decided to add two new issues for its consideration in future sessions: (i) patents and the environment, particularly with respect to climate change and alternative energy sources; and (ii) patent quality management systems.

(ii) *Standing Committee on Copyright and Related Rights (SCCR)*

At its eighteenth[556] and nineteenth[557] sessions, held respectively in May and December 2009, the SCCR reconfirmed its commitment to develop norms and anticipate the impli-

[550] See the report of the thirteenth session of the Standing Committee on the Law of Patents (SCP/13/8).

[551] SCP/12/3 Rev.2.

[552] SCP/13/3.

[553] SCP/13/5.

[554] SCP/13/2.

[555] SCP/13/4.

[556] See the report of the eighteenth session of the Standing Committee on Copyright and Related Rights (SCCR/18/7).

[557] See the report of the nineteenth session of the Standing Committee on Copyright and Related Rights (SCCR/19/15).

cations of digital technology regarding copyright limitations and exceptions on behalf of educational entities, libraries, archives, and disabled persons. To this end, the SCCR reviewed and discussed new expert studies, analytical documents, draft questionnaires for Member States, and proposals for an international treaty mandating access to protected materials by persons with print disabilities.

Despite an ongoing deadlock, the SCCR decided to maintain informal, open-ended consultations regarding the protection of audiovisual performances and broadcasting organizations on a signal-based approach. The SCCR requested position papers as well as a study to be commissioned on the socioeconomic dimension of the unauthorized use of broadcasting signals.

(iii) *Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications (SCT)*

In 2009, the 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. At its twenty-first[558] and twenty-second[559] sessions held respectively in June and November 2009, the SCT considered working documents on (i) possible areas of convergence in industrial design law and practice, (ii) grounds for refusal of all types of marks, (iii) technical and procedural aspects relating to the registration of certification and collective marks, and (iv) the protection of official names of States under Article 6*ter* of the Paris Convention for the Protection of Industrial Property. The SCT also requested the establishment of a Digital Access Service for Priority Documents for industrial designs and trademarks.

(*d*) International registration activities

(i) *Patents*

According to provisional data for 2009, the Secretariat recorded 139,016 international patent applications under the Patent Cooperation Treaty (PCT).[560] While fewer than in 2008, the total number of international patent applications filed in 2009 will be higher than any number of applications received under the PCT in a single year before 2006. The leading country of origin by number of international applications filed was the United States of America (provisionally 41,258 applications).

At its fortieth (seventeenth ordinary) session held from 22 September to 1 October 2009, the Assembly of the PCT Union adopted amendments to the Regulations under the PCT with effect from 1 July, 2010. The amendments address international preliminary

[558] See the report of the twenty-first session of the Standing Committee on the Law of Trademarks (SCT/21/8).

[559] See the report of the twenty-second session of the Standing Committee on the Law of Trademarks (SCT/22/9).

[560] United Nations, *Treaty Series*, vol. 1160, p. 231.

reports on patentability as well as the appropriate currency, schedule, and refund terms for international filing, handling, and search fees.

During the year under review, Chile, Peru, and Thailand adhered to the PCT, bringing the total number of contracting parties to 142.

(ii) *Trademarks*

According to data for 2009, the Secretariat recorded 35,925 international registrations of trademarks under the Madrid system.[561]

During the year under review, Egypt, Liberia, and the Sudan adhered to the Madrid Protocol, bringing the total number of contracting parties to 81.

(iii) *Industrial designs*

According to data for 2009, the Secretariat recorded 1,681 registrations of industrial designs under the Hague system. The number of designs contained in those registrations was 8,872.

During the year under review, Poland, Serbia, and Germany adhered to the Geneva Act of the Hague Agreement,[562] bringing the total number of contracting parties to 56.

(iv) *Appellations of origin*

According to data for 2009, the Secretariat recorded 4 new appellations of origin in the International Register, which brought to 817 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).[563]

At its twenty-fifth (eighteenth extraordinary) session, which was held from 22 September to 1 October 2009, the Assembly of the Lisbon Union adopted amendments to the Regulations under the Lisbon Agreement with effect from January 1, 2010. In particular, new rule 11 *bis* lays down an optional procedure for the notification and registration of statements of grant of protection, and new rule 23 *bis* defines the procedure governing the establishment and modification of Administrative Instructions.

The total number of contracting parties of the Lisbon Agreement is 26.

---

[561] Madrid Agreement concerning the international registration of marks. United Nations, *Treaty Series*, vol. 828, p. 391.

[562] Geneva Act of the Hague Agreement concerning the international registration of industrial designs (with regulations). United Nations, *Treaty Series*, vol. 2279, p. 31.

[563] United Nations, *Treaty Series*, vol. 923, p. 89.

(*e*) Intellectual Property and Global Issues

(i) *Genetic resources, traditional knowledge and folklore*

The Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC) at its fourteenth and fifteenth sessions held respectively in July and December 2009, reviewed the progress made on its substantive agenda, particularly its two working documents for the protection of traditional cultural expressions/folklore and traditional knowledge as well as contributions to and disbursements from the WIPO Voluntary Fund for Accredited Indigenous and Local Communities. The IGC continued to engage member States as well as other Committee participants by accrediting various IGOs and NGOs, drawing attention to the indigenous panels, commissioning surveys of existing practices under the Creative Heritage Project, and soliciting proposals for continuing or further work.

(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. In 2009, the Center marked the tenth anniversary of the Uniform Domain Name Dispute Resolution Policy (UDRP), which sets out the legal framework for the resolution of disputes between a domain name registrant and a third party. In December 2009, the Center launched the eUDRP Initiative for essentially paperless UDRP procedures, thus reducing the time and cost involved with filing. The Center has processed 16,770 disputes (2,107 disputes during the year under review) under the UDRP, which applies to all registrations in generic Top-Level Domains as well as country code Top-Level Domains for 62 States that have adopted the policy on a voluntary basis. Together, these administrative proceedings have involved parties from 153 countries and some 30,000 Internet domain names. Apart from UDRP cases, the Center has administered over 15,000 cases under Sunrise policies relating to registrations in the start-up phase of new domains.

The Center has established a list of over 1,500 independent arbitrators, mediators, and experts from 70 countries. These neutral decision-makers are well-reputed for their dispute resolution experience and their substantive expertise in the areas of IP, electronic commerce, and the Internet. In addition to its domain name dispute resolutions and expert determinations, the Center has administered over 210 mediation and arbitration cases with settlement rates of 73 per cent and 58 per cent respectively.

In July 2009, the Center announced plans to open a Singapore office to focus on promoting alternative dispute resolution services in the Asia Pacific region. The Singapore office will provide training and administer cases under the WIPO Rules as well as cooperate in the establishment of an international WIPO Mediation and Arbitration Scheme for Film Related Disputes (the Film ADR Scheme) between the Center and Singapore's Media Development Authority. The WIPO Mediation and Expedited Arbitration Rules for Film and Media, which are specifically tailored to resolve potential disputes in the film and media sectors where parties require an expedited procedure, went into effect on 11 November, 2009. Both the new Rules and the Film ADR Scheme are examples of the Center's efforts to customize dispute resolution for recurrent disputes arising in a specific industry sector or involving a particular subject matter.

(iii) *New members and new accessions*

In 2009, 71 new instruments of ratification and/or accession were received and processed in respect of WIPO-administered treaties.

The following figures show the number of new country adherences to the treaties, with the parenthetical figures representing the total number of States now party to the corresponding treaty at the end of 2009:

- Convention Establishing the World Intellectual Property Organization: 0 (184);
- Paris Convention for the Protection of Industrial Property: 0 (173);
- Bern Convention for the Protection of Literary and Artistic Works: 0 (164);
- Patent Cooperation Treaty: 3 (142);
- Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks: 3 (81);
- Trademark Law Treaty: 3 (45);
- Patent Law Treaty: 3 (22);
- 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: 0 (83);
- Locarno Agreement Establishing an International Classification for Industrial Designs: 2 (51);
- Vienna Agreement Establishing an International Classification of the Figurative Elements of Marks: 2 (27); WIPO Copyright Treaty: 20 (88);
- WIPO Performances and Phonograms Treaty: 19 (86);
- Singapore Treaty on the Law of Trademarks: 8 (17);
- Lisbon Agreement for the Protection of Appellations of Origin and their International Registration: 0 (26);
- Strasbourg Agreement Concerning the International Patent Classification: 2 (61);
- Nairobi Treaty on the Protection of the Olympic Symbol: 0 (47);
- Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure: 0 (72);
- Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations: 0 (88);
- Geneva Act of the Hague Agreement Concerning the International Registration of Industrial Designs: 3 (56);
- Brussels Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite: 0 (33);
- Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms: 1 (77); and
- International Convention for the Protection of New Varieties of Plants (UPOV): 2 (68).

9. World Trade Organization

(*a*) Membership

(i) *Recently completed accessions*

At its tenth plenary meeting, on 12 October 2009, the thirty-fifth session of the General Conference decided to admit the Faroes as an associate member of the Organization. The Organization has now seven associate members.

(ii) *Ongoing accessions*

1. Afghanistan
2. Andorra
3. Algeria
4. Azerbaijan
5. Bahamas
6. Belarus
7. Bhutan
8. Bosnia and Herzegovina
9. Comoros
10. Equatorial Guinea
11. Ethiopia
12. Iran
13. Iraq
14. Kazakhstan
15. Lao People's Democratic Republic
16. Lebanon
17. Liberia
18. Libyan Arab Jamahiriya
19. Montenegro
20. Russian Federation
21. Samoa
22. Sao Tome and Principe
23. Serbia
24. Seychelles
25. Sudan
26. Tajikistan
27. Uzbekistan
28. Vanuatu[563]
29. Yemen

Of these 29 applicants:

- 24 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 an Elements of a draft Working Party Report has been prepared for 13 applicants.

A Working Party has not yet been established to examine a request for accession from Syria.[565]

---

[564] 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.

[565] See documents WT/ACC/SYR/1, 2 and 3.

(*b*) Dispute settlement

During 2009, 14 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:

- United States—Definitive Anti-Dumping and Countervailing Duties on Certain Products from China (WT/DS379);
- United States—Anti-Dumping Measures on Polyethylene Carrier Bags from Thailand (WT/DS383);
- United States—Measures Concerning the Importation, Marketing and Sale of Tuna and Tuna Products (WT/DS381);
- United States—Certain Measures Affecting Imports of Poultry from China (WT/DS392);
- Korea—Measures Affecting the Importation of Bovine Meat and Meat Products from Canada (WT/DS391);
- United States—Anti-Dumping Administrative Reviews and other Measures Related to Imports of certain Orange Juice from Brazil (WT/DS391);
- European Communities—Definitive Anti-Dumping Measures on certain Iron or Steel Fasteners from China (WT/DS397);
- United States—Certain Country of Origin Labelling (COOL) Requirements (WT/DS384, WT/DS386);
- European Communities—Certain Measures Affecing Poultry Meat and Poultry Meat Products from the United States (WT/DS389);
- China—Measures Related to the Exportation of Various Raw Materials (WT/DS394, WT/DS395, WT/DS398);

During 2009, the Dispute Settlement Body adopted panel and Appellate Body reports in the following cases:

- China—Measures Affecting Imports of Automobile Parts (WT/DS339, WT/DS340, WT/DS342) (Appellate Body and Panel reports);
- United States—Continued Existence and Application of Zeroing Methodology (WT/DS350);
- China—Measures Affecting the Protection and Enforcement of Intellectual Property Rights (WT/DS362) (Panel report);
- Colombia—Indicative Prices and Restrictions on Ports of Entry (WT/DS366).

(*c*) Waivers under article XI of the WTO Agreement

WAIVERS	GRANTED	EXPIRY	DECISION
LDCs—Article 70.9 of the TRIPS Agreement with respect to pharmaceutical products	8 July 2002	1 January 2016	WT/L/478
European Communities—European Communities' preferences for Albania, Bosnia and Herzegovina, Croatia, Serbia and Montenegro, and the Former Yugoslav Republic of Macedonia	28 July 2006	31 December 2011	WT/L/654
Canada—CARIBCAN	15 December 2006	31 December 2011	WT/L/677
Cuba—Article XV:6 of GATT 1994	15 December 2006	31 December 2011	WT/L/678
Australia, Botswana, Brazil, Canada, Croatia, India, Israel, Japan, Korea, Mauritius, Mexico, Norway, Philippines, Sierra Leone, Chinese Taipei, Thailand, United Arab Emirates, United States, Venezuela—Kimberley Process Certification Scheme for rough diamonds—Extension of waiver	15 December 2006	31 December 2012	WT/L/676
United States—Former Trust Territory of the Pacific Islands	27 July 2007	31 December 2016	WT/L/694
Mongolia—Export duties on raw cashmere	27 July 2007	29 January 2012	WT/L/695
European Communities—Application of Autonomous Preferential Treatment to Moldova	7 May 2008	31 December 2013	WT/L/722
Argentina, Australia, Brazil, China, Costa Rica, Croatia, El Salvador, European Communities, Iceland, India, Republic of Korea, Mexico, New Zealand, Norway, Thailand, United States and Uruguay—Introduction of Harmonized System 2002 Changes into WTO Schedules of Tariff Concessions	18 December 2008	31 December 2010	WT/L/786

WAIVERS	GRANTED	EXPIRY	DECISION
Argentina, Australia, Brazil, Canada, China, Costa Rica, Croatia, El Salvador, European Communities, Guatemala, Honduras; Hong Kong, China; India, Korea; Macao, China; Malaysia, Mexico, New Zealand, Nicaragua, Norway, Pakistan, Singapore, Switzerland, Thailand, United States and Uruguay—Introduction of Harmonized System 2007 Changes into WTO Schedules of Tariff Concessions	18 December 2008	31 December 2010	WT/L/787
United States—Caribbean Basin Economic Recovery Act	27 May 2009	31 December 2014	WT/L/753
United States—African Growth and Opportunity Act	27 May 2009	30 September 2015	WT/L/754
United States—Andean Trade Preference Act	27 May 2009	31 December 2014	WT/L/755
Argentina—Introduction of Harmonized System 1996 Changes into WTO Schedules of Tariff Concessions	27 May 2009	30 April 2010	WT/L/757
Panama—Introduction of Harmonized System 1996 Changes into WTO Schedules of Tariff Concessions	27 May 2009	30 April 2010	WT/L/758
Preferential Tariff Treatment for Least-Developed Countries	27 May 2009	30 June 2019	WT/L/759

10. Organization for the Prohibition of Chemical Weapons

(*a*) Membership

During 2009, three States, Bahamas, Dominican Republic and Iraq, became parties to the Chemical Weapons Convention[566] (the Convention or CWC). As of 31 December 2009, 188 States are parties to the CWC, and another two countries have signed but not yet ratified the Convention.

(*b*) Legal Status, Privileges and Immunities and International Agreements

During 2009, 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. Two agreements on privileges and immunities were signed during the year under review. The first agreement, concluded with Burundi, was signed on 20 April 2009, and the second agreement was signed with the United Arab Emirates on 24 April 2009.

[566] United Nations, *Treaty Series*, vol. 1974, p. 45.

In addition, during the year under review, the Privileges and Immunities Agreements signed between Argentina, El Salvador, Serbia,[567] Poland and OPCW respectively entered into force.

OPCW concluded a number of memoranda of understanding and technical arrangements during 2009. In total, sixteen international agreements were registered during the year under review.

(*c*) OPCW Legislative Assistance Activities

Throughout 2009, 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. The OPCW continued to provide tailor-made assistance on national implementation of the Convention to the requesting States parties, pursuant to subparagraph 38 (e) of article VIII of the Convention, as well as to the decision on the implementation of article VII obligations adopted by the Conference of States Parties at its Thirteenth Session.[568]

In its implementation support efforts, the Technical Secretariat of the OPCW acted in accordance with the terms of 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)[569] as well as other decisions regarding the implementation of article VII obligations.[570] These decisions focused on, amongst other things, the obligations of States parties to designate or establish a National Authority to serve as national focal point for effective liaison with the OPCW and other States parties, as required by paragraph 4 of article VII of the Convention, and the steps necessary to enact national implementing legislation, including penal legislation and administrative measures to implement the Convention, as required by paragraph 1 of article VII of the Convention.

During 2009, the Technical Secretariat provided, upon request, 25 comments on draft implementing legislation and 20 comments or guidance on measures at the regulatory level. Such requests for legal assistance were received from 29 States parties from the following regions: 18 from Africa, eight from Asia; one from Eastern Europe; one from the Group of Latin American and Caribbean States; and one from the Group of Western European and other States.

In addition to assistance to individual States parties, a number of national, sub-regional, regional workshops, sensitization and awareness presentations and training courses were held for national authorities, parliamentarians and other national stakeholders involved in the implementation of the Convention. These events dealt, *inter alia*, with matters such as legislative and regulatory drafting.

---

[567] For the text of the Agreement between the Organisation for the Prohibition of Chemical Weapons and the Republic of Serbia on the Privileges and Immunities of the OPCW, see chapter II B of this publication.

[568] C-13/DEC.7, dated 5 December 2008.

[569] C-8/DEC.16, dated 24 October 2003.

[570] C-10/DEC.16 of 11 November 2005, C-11/DEC.4 of 6 December 2006 and C-12/DEC.9 of 9 November 2007.

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 2009, eight 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 185. These States were: Bahamas, Barbados, Comoros, Congo, the Dominican Republic, Honduras, Iraq and Lebanon. Three States parties have not yet established their respective National Authorities.

In 2009, four additional States parties, Indonesia, Mexico, Montenegro, and Sri Lanka, had notified the OPCW of having adopted measures covering all key areas of the Action Plan. The number of States having legislation covering all these key areas has therefore increased to 87.

Chapter IV

TREATIES CONCERNING INTERNATIONAL LAW CONCLUDED UNDER THE AUSPICES OF THE UNITED NATIONS AND RELATED INTERGOVERNMENTAL ORGANIZATIONS

A. Treaties concerning international law concluded under the auspices of the United Nations

[No treaty concerning international law was concluded under the auspices of the United Nations in 2009.]

B. Treaties concerning international law concluded under the auspices of intergovernmental organizations related to the United Nations

1. International Civil Aviation Organization

(a) Convention on Compensation for Damage to Third Parties, Resulting from Acts of Unlawful Interference Involving Aircraft. Montréal, 2 May 2009[*]

The States Parties to this Convention,

Recognizing the serious consequences of acts of unlawful interference with aircraft which cause damage to third parties and to property;

Recognizing that there are currently no harmonized rules relating to such consequences;

Recognizing the importance of ensuring protection of the interests of third-party victims and the need for equitable compensation, as well as the need to protect the aviation industry from the consequences of damage caused by unlawful interference with aircraft;

Considering the need for a coordinated and concerted approach to providing compensation to third-party victims, based on cooperation between all affected parties;

Reaffirming the desirability of the orderly development of international air transport operations and the smooth flow of passengers, baggage and cargo in accordance with the principles and objectives of the Convention on International Civil Aviation, done at Chicago on 7 December 1944; and

[*] Adopted at the International Conference on Air Law held under the auspices of the International Civil Aviation Organization in Montréal from 20 April to 2 May 2009

Convinced that collective State action for harmonization and codification of certain rules governing compensation for the consequences of an event of unlawful interference with aircraft in flight through a new Convention is the most desirable and effective means of achieving an equitable balance of interests;

Have agreed as follows:

Chapter I. Principles

Article 1. Definitions

For the purposes of this Convention:

(*a*) an "act of unlawful interference" means an act which is defined as an offence in the Convention for the Suppression of Unlawful Seizure of Aircraft, Signed at The Hague on 16 December 1970, or the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, Signed at Montréal on 23 September 1971, and any amendment in force at the time of the event;

(*b*) an "event" occurs when damage results from an act of unlawful interference involving an aircraft in flight;

(*c*) an aircraft is considered to be "in flight" at any time from the moment when all its external doors are closed following embarkation or loading until the moment when any such door is opened for disembarkation or unloading;

(*d*) "international flight" means any flight whose place of departure and whose intended destination are situated within the territories of two States, whether or not there is a break in the flight, or within the territory of one State if there is an intended stopping place in the territory of another State;

(*e*) "maximum mass" means the maximum certificated take-off mass of the aircraft, excluding the effect of lifting gas when used;

(*f*) "operator" means the person who makes use of the aircraft, provided that if control of the navigation of the aircraft is retained by the person from whom the right to make use of the aircraft is derived, whether directly or indirectly, that person shall be considered the operator. A person shall be considered to be making use of an aircraft when he or she is using it personally or when his or her servants or agents are using the aircraft in the course of their employment, whether or not within the scope of their authority. The operator shall not lose its status as operator by virtue of the fact that another person commits an act of unlawful interference;

(*g*) "person" means any natural or legal person, including a State;

(*h*) "senior management" means members of an operator's supervisory board, members of its board of directors, or other senior officers of the operator who have the authority to make and have significant roles in making binding decisions about how the whole of or a substantial part of the operator's activities are to be managed or organized;

(*i*) "State Party" means a State for which this Convention is in force; and

(*j*) "third party" means a person other than the operator, passenger or consignor or consignee of cargo.

Article 2. Scope

1. This Convention applies to damage to third parties which occurs in the territory of a State Party caused by an aircraft in flight on an international flight, as a result of an act of unlawful interference. This Convention shall also apply to such damage that occurs in a State non-Party as provided for in Article 28.

2. If a State Party so declares to the Depositary, this Convention shall also apply to damage to third parties that occurs in the territory of that State Party which is caused by an aircraft in flight other than on an international flight, as a result of an act of unlawful interference.

3. For the purposes of this Convention:

(*a*) damage to a ship in or an aircraft above the High Seas or the Exclusive Economic Zone shall be regarded as damage occurring in the territory of the State in which it is registered; however, if the operator of the aircraft has its principal place of business in the territory of a State other than the State of Registry, the damage to the aircraft shall be regarded as having occurred in the territory of the State in which it has its principal place of business; and

(*b*) damage to a drilling platform or other installation permanently fixed to the soil in the Exclusive Economic Zone or the Continental Shelf shall be regarded as having occurred in the territory of the State Party which has jurisdiction over such platform or installation in accordance with international law, including the United Nations Convention on the Law of the Sea, done at Montego Bay on 10 December 1982.

4. This Convention shall not apply to damage caused by State aircraft. Aircraft used in military, customs and police services shall be deemed to be State aircraft.

Chapter II. Liability of the operator and related issues

Article 3. Liability of the operator

1. The operator shall be liable to compensate for damage within the scope of this Convention upon condition only that the damage was caused by an aircraft in flight.

2. There shall be no right to compensation under this Convention if the damage is not a direct consequence of the event giving rise thereto.

3. Damages due to death, bodily injury and mental injury shall be compensable. Damages due to mental injury shall be compensable only if caused by a recognizable psychiatric illness resulting either from bodily injury or from direct exposure to the likelihood of imminent death or bodily injury.

4. Damage to property shall be compensable.

5. Environmental damage shall be compensable, in so far as such compensation is provided for under the law of the State in the territory of which the damage occurred.

6. No liability shall arise under this Convention for damage caused by a nuclear incident as defined in the Paris Convention on Third Party Liability in the Field of Nuclear Energy (29 July 1960) or for nuclear damage as defined in the Vienna Convention on Civil Liability for Nuclear Damage (21 May 1963), and any amendment or supplements to these Conventions in force at the time of the event.

7. Punitive, exemplary or any other non-compensatory damages shall not be recoverable.

Article 4. Limit of the operator's liability

1. The liability of the operator arising under Article 3 shall not exceed for an event the following limit based on the mass of the aircraft involved:

(*a*) 750 000 Special Drawing Rights for aircraft having a maximum mass of 500 kilogrammes or less;

(*b*) 1 500 000 Special Drawing Rights for aircraft having a maximum mass of more than 500 kilogrammes but not exceeding 1 000 kilogrammes;

(*c*) 3 000 000 Special Drawing Rights for aircraft having a maximum mass of more than 1 000 kilogrammes but not exceeding 2 700 kilogrammes;

(*d*) 7 000 000 Special Drawing Rights for aircraft having a maximum mass of more than 2 700 kilogrammes but not exceeding 6 000 kilogrammes;

(*e*) 18 000 000 Special Drawing Rights for aircraft having a maximum mass of more than 6 000 kilogrammes but not exceeding 12 000 kilogrammes;

(*f*) 80 000 000 Special Drawing Rights for aircraft having a maximum mass of more than 12 000 kilogrammes but not exceeding 25 000 kilogrammes;

(*g*) 150 000 000 Special Drawing Rights for aircraft having a maximum mass of more than 25 000 kilogrammes but not exceeding 50 000 kilogrammes;

(*h*) 300 000 000 Special Drawing Rights for aircraft having a maximum mass of more than 50 000 kilogrammes but not exceeding 200 000 kilogrammes;

(*i*) 500 000 000 Special Drawing Rights for aircraft having a maximum mass of more than 200 000 kilogrammes but not exceeding 500 000 kilogrammes;

(*j*) 700 000 000 Special Drawing Rights for aircraft having a maximum mass of more than 500 000 kilogrammes.

2. If an event involves two or more aircraft operated by the same operator, the limit of liability in respect of the aircraft with the highest maximum mass shall apply.

Article 5. Events involving two or more operators

1. Where two or more aircraft have been involved in an event causing damage to which this Convention applies, the operators of those aircraft are jointly and severally liable for any damage suffered by a third party.

2. If two or more operators are so liable, the recourse between them shall depend on their respective limits of liability and their contribution to the damage.

3. No operator shall be liable for a sum in excess of the limit, if any, applicable to its liability.

Article 6. Advance payments

If required by the law of the State where the damage occurred, the operator shall make advance payments without delay to natural persons who may be entitled to claim compensation under this Convention, in order to meet their immediate economic needs.

Such advance payments shall not constitute a recognition of liability and may be offset against any amount subsequently payable as damages by the operator.

Article 7. Insurance

1. Having regard to Article 4, States Parties shall require their operators to maintain adequate insurance or guarantee covering their liability under this Convention. If such insurance or guarantee is not available to an operator on a per event basis, the operator may satisfy this obligation by insuring on an aggregate basis. States Parties shall not require their operators to maintain such insurance or guarantee to the extent that they are covered by a decision made pursuant to Article 11, paragraph 1(e) or Article 18, paragraph 3.

2. An operator may be required by the State Party in or into which it operates to furnish evidence that it maintains adequate insurance or guarantee. In doing so, the State Party shall apply the same criteria to operators of other States Parties as it applies to its own operators. Proof that an operator is covered by a decision made pursuant to Article 11, paragraph 1(e) or Article 18, paragraph 3, shall be sufficient evidence for the purpose of this paragraph.

Chapter III. The International Civil Aviation Compensation Fund

Article 8. The constitution and objectives of the International Civil Aviation Compensation Fund

1. An organization named the International Civil Aviation Compensation Fund, hereinafter referred to as "the International Fund," is established by this Convention. The International Fund shall be made up of a Conference of Parties, consisting of the States Parties, and a Secretariat headed by a Director.

2. The International Fund shall have the following purposes:

(*a*) to provide compensation for damage according to Article 18, paragraph 1, pay damages according to Article 18, paragraph 3, and provide financial support under Article 28;

(*b*) to decide whether to provide supplementary compensation to passengers on board an aircraft involved in an event, according to Article 9, paragraph (j);

(*c*) to make advance payments under Article 19, paragraph 1, and to take reasonable measures after an event to minimize or mitigate damage caused by an event, according to Article 19, paragraph 2; and

(*d*) to perform other functions compatible with these purposes.

3. The International Fund shall have its seat at the same place as the International Civil Aviation Organization.

4. The International Fund shall have international legal personality.

5. In each State Party, the International Fund shall be recognized as a legal person capable under the laws of that State of assuming rights and obligations, entering into contracts, acquiring and disposing of movable and immovable property and of being a party in legal proceedings before the courts of that State. Each State Party shall recognize the Director of the International Fund as the legal representative of the International Fund.

6. The International Fund shall enjoy tax exemption and such other privileges as are agreed with the host State. Contributions to the International Fund and its funds, and any proceeds from them, shall be exempted from tax in all States Parties.

7. The International Fund shall be immune from legal process, except in respect of actions relating to credits obtained in accordance with Article 17 or to compensation payable in accordance with Article 18. The Director of the International Fund shall be immune from legal process in relation to acts performed by him or her in his or her official capacity. The immunity of the Director may be waived by the Conference of Parties. The other personnel of the International Fund shall be immune from legal process in relation to acts performed by them in their official capacity. The immunity of the other personnel may be waived by the Director.

8. Neither a State Party nor the International Civil Aviation Organization shall be liable for acts, omissions or obligations of the International Fund.

Article 9. The Conference of Parties

The Conference of Parties shall:

(*a*) determine its own rules of procedure and, at each meeting, elect its officers;

(*b*) establish the Regulations of the International Fund and the Guidelines for Compensation;

(*c*) appoint the Director and determine the terms of his or her employment and, to the extent this is not delegated to the Director, the terms of employment of the other employees of the International Fund;

(*d*) delegate to the Director, in addition to powers given in Article 11, such powers and authority as may be necessary or desirable for the discharge of the duties of the International Fund and revoke or modify such delegations of powers and authority at any time;

(*e*) decide the period for, and the amount of, initial contributions and fix the contributions to be made to the International Fund for each year until the next meeting of the Conference of Parties;

(*f*) in the case where the aggregate limit on contributions under Article 14, paragraph 3, has been applied, determine the global amount to be disbursed to the victims of all events occurring during the time period with regard to which Article 14, paragraph 3, was applied;

(*g*) appoint the auditors;

(*h*) vote budgets and determine the financial arrangements of the International Fund including the Guidelines on Investment, review expenditures, approve the accounts of the International Fund, and consider the reports of the auditors and the comments of the Director thereon;

(*i*) examine and take appropriate action on the reports of the Director, including reports on claims for compensation, and decide on any matter referred to it by the Director;

(*j*) decide whether and in what circumstances supplementary compensation may be payable by the International Fund to passengers on board an aircraft involved in an event

in circumstances where the damages recovered by passengers according to applicable law did not result in the recovery of compensation commensurate with that available to third parties under this Convention. In exercising this discretion, the Conference of Parties shall seek to ensure that passengers and third parties are treated equally;

(*k*) establish the Guidelines for the application of Article 28, decide whether to apply Article 28 and set the maximum amount of such assistance;

(*l*) determine which States non-Party and which intergovernmental and international non-governmental organizations shall be admitted to take part, without voting rights, in meetings of the Conference of Parties and subsidiary bodies;

(*m*) establish any body necessary to assist it in its functions, including, if appropriate, an Executive Committee consisting of representatives of States Parties, and define the powers of such body;

(*n*) decide whether to obtain credits and grant security for credits obtained pursuant to Article 17, paragraph 4;

(*o*) make such determinations as it sees fit under Article 18, paragraph 3;

(*p*) enter into arrangements on behalf of the International Fund with the International Civil Aviation Organization;

(*q*) request the International Civil Aviation Organization to assume an assistance, guidance and supervisory role with respect to the International Fund as far as the principles and objectives of the Convention on International Civil Aviation, done at Chicago on 7 December 1944, are concerned. ICAO may assume these tasks in accordance with pertinent decisions of its Council;

(*r*) as appropriate, enter into arrangements on behalf of the International Fund with other international bodies; and

(*s*) consider any matter relating to this Convention that a State Party or the International Civil Aviation Organization has referred to it.

Article 10. The meetings of the Conference of Parties

1. The Conference of Parties shall meet once a year, unless a Conference of Parties decides to hold its next meeting at another interval. The Director shall convene the meeting at a suitable time and place.

2. An extraordinary meeting of the Conference of Parties shall be convened by the Director:

(*a*) at the request of no less than one-fifth of the total number of States Parties;

(*b*) if an aircraft has caused damage falling within the scope of this Convention, and the damages are likely to exceed the applicable limit of liability according to Article 4 by more than 50 per cent of the available funds of the International Fund;

(*c*) if the aggregate limit on contributions according to Article 14, paragraph 3, has been reached; or

(*d*) if the Director has exercised the authority according to Article 11, paragraph 1 (d) or (e).

3. All States Parties shall have an equal right to be represented at the meetings of the Conference of Parties and each State Party shall be entitled to one vote. The International Civil Aviation Organization shall have the right to be represented, without voting rights, at the meetings of the Conference of Parties.

4. A majority of the States Parties is required to constitute a quorum for the meetings of the Conference of Parties. Decisions of the Conference of Parties shall be taken by a majority vote of the States Parties present and voting. Decisions under Article 9, subparagraphs (a), (b), (c), (d), (e), (k), (m), (n) and (o) shall be taken by a two-thirds majority of the States Parties present and voting.

5. Any State Party may, within ninety days after the deposit of an instrument of denunciation the result of which it considers will significantly impair the ability of the International Fund to perform its functions, request the Director to convene an extraordinary meeting of the Conference of Parties. The Director may convene the Conference of Parties to meet not later than sixty days after receipt of the request.

6. The Director may convene, on his or her own initiative, an extraordinary meeting of the Conference of Parties to meet within sixty days after the deposit of any instrument of denunciation, if he or she considers that such denunciation will significantly impair the ability of the International Fund to perform its functions.

7. If the Conference of Parties at an extraordinary meeting convened in accordance with paragraph 5 or 6 decides by a two-thirds majority of the States Parties present and voting that the denunciation will significantly impair the ability of the International Fund to perform its functions, any State Party may, not later than one hundred and twenty days before the date on which the denunciation takes effect, denounce this Convention with effect from that same date.

Article 11. The Secretariat and the Director

1. The International Fund shall have a Secretariat led by a Director. The Director shall hire personnel, supervise the Secretariat and direct the day-to-day activities of the International Fund. In addition, the Director:

(*a*) shall report to the Conference of Parties on the functioning of the International Fund and present its accounts and a budget;

(*b*) shall collect all contributions payable under this Convention, administer and invest the funds of the International Fund in accordance with the Guidelines on Investment, maintain accounts for the funds, and assist in the auditing of the accounts and the funds in accordance with Article 17;

(*c*) shall handle claims for compensation in accordance with the Guidelines for Compensation, and prepare a report for the Conference of Parties on how each has been handled;

(*d*) may decide to temporarily take action under Article 19 until the next meeting of the Conference of Parties;

(*e*) shall decide to temporarily take action under Article 18, paragraph 3, until the next meeting of the Conference of Parties called in accordance with Article 10, paragraph 2 (d);

(*f*) shall review the sums prescribed under Articles 4 and 18 and inform the Conference of Parties of any revision to the limits of liability in accordance with Article 31; and

(*g*) shall discharge any other duties assigned to him or her by or under this Convention and decide any other matter delegated by the Conference of Parties.

2. The Director and the other personnel of the Secretariat shall not seek or receive instructions in regard to the discharge of their responsibilities from any authority external to the International Fund. Each State Party undertakes to fully respect the international character of the responsibilities of the personnel and not seek to influence any of its nationals in the discharge of their responsibilities.

Article 12. Contributions to the International Fund

1. The contributions to the International Fund shall be:

(*a*) the mandatory amounts collected in respect of each passenger and each tonne of cargo departing on an international commercial flight from an airport in a State Party. Where a State Party has made a declaration under Article 2, paragraph 2, such amounts shall also be collected in respect of each passenger and each tonne of cargo departing on a commercial flight between two airports in that State Party; and

(*b*) such amounts as the Conference of Parties may specify in respect of general aviation or any sector thereof.

The operator shall collect these amounts and remit them to the International Fund.

2. Contributions collected in respect of each passenger and each tonne of cargo shall not be collected more than once in respect of each journey, whether or not that journey includes one or more stops or transfers.

Article 13. Basis for fixing the contributions

1. Contributions shall be fixed having regard to the following principles:

(a) the objectives of the International Fund should be efficiently achieved;

(*b*) competition within the air transport sector should not be distorted;

(*c*) the competitiveness of the air transport sector in relation to other modes of transportation should not be adversely affected; and

(*d*) in relation to general aviation, the costs of collecting contributions shall not be excessive in relation to the amount of such contributions, taking into account the diversity that exists in this sector.

2. The Conference of Parties shall fix contributions in a manner that does not discriminate between States, operators, passengers and consignors or consignees of cargo.

3. On the basis of the budget drawn up according to Article 11, paragraph 1 (a), the contributions shall be fixed having regard to:

(*a*) the upper limit for compensation set out in Article 18, paragraph 2;

(*b*) the need for reserves where Article 18, paragraph 3, is applied;

(*c*) claims for compensation, measures to minimize or mitigate damages and financial assistance under this Convention;

(*d*) the costs and expenses of administration, including the costs and expenses incurred by meetings of the Conference of Parties;

(*e*) the income of the International Fund; and

(*f*) the availability of additional funds for compensation pursuant to Article 17, paragraph 4.

Article 14. Period and rate of contributions

1. At its first meeting, the Conference of Parties shall decide the period and the rate of contributions in respect of passengers and cargo departing from a State Party to be made from the time of entry into force of this Convention for that State Party. If a State Party makes a declaration under Article 2, paragraph 2, initial contributions shall be paid in respect of passengers and cargo departing on flights covered by such declaration from the time it takes effect. The period and the rate shall be equal for all States Parties.

2. Contributions shall be fixed in accordance with paragraph 1 so that the funds available amount to 100 per cent of the limit of compensation set out in Article 18, paragraph 2, within four years. If the funds available are deemed sufficient in relation to the likely compensation or financial assistance to be provided in the foreseeable future and amount to 100 per cent of that limit, the Conference of Parties may decide that no further contributions shall be made until the next meeting of the Conference of Parties, provided that both the period and rate of contributions shall be applied in respect of passengers and cargo departing from a State in respect of which this Convention subsequently enters into force.

3. The total amount of contributions collected by the International Fund within any period of two consecutive calendar years shall not exceed three times the maximum amount of compensation according to Article 18, paragraph 2.

4. Subject to Article 28, the contributions collected by an operator in respect of a State Party may not be used to provide compensation for an event which occurred in its territory prior to the entry into force of this Convention for that State Party.

Article 15. Collection of the contributions

1. The Conference of Parties shall establish in the Regulations of the International Fund a transparent, accountable and cost-effective mechanism supporting the collection, remittal and recovery of contributions. When establishing the mechanism, the Conference of Parties shall endeavour not to impose undue burdens on operators and contributors to the funds of the International Fund. Contributions which are in arrears shall bear interest as provided for in the Regulations.

2. Where an operator does not collect or does not remit contributions it has collected to the International Fund, the International Fund shall take appropriate measures against such operator with a view to the recovery of the amount due. Each State Party shall ensure that an action to recover the amount due may be taken within its jurisdiction, notwithstanding in which State Party the debt actually accrued.

Article 16. Duties of States Parties

1. Each State Party shall take appropriate measures, including imposing such sanctions as it may deem necessary, to ensure that an operator fulfils its obligations to collect and remit contributions to the International Fund.

2. Each State Party shall ensure that the following information is provided to the International Fund:

(*a*) the number of passengers and quantity of cargo departing on international commercial flights from that State Party;

(*b*) such information on general aviation flights as the Conference of Parties may decide; and

(*c*) the identity of the operators performing such flights.

3. Where a State Party has made a declaration under Article 2, paragraph 2, it shall ensure that information detailing the number of passengers and quantity of cargo departing on commercial flights between two airports in that State Party, such information on general aviation flights as the Conference of Parties may decide, and the identity of the operators performing such flights, are also provided. In each case, such statistics shall be *prima facie* evidence of the facts stated therein.

4. Where a State Party does not fulfil its obligations under paragraphs 2 and 3 of this Article and this results in a shortfall in contributions for the International Fund, the State Party shall be liable for such shortfall. The Conference of Parties shall, on recommendation by the Director, decide whether the State Party shall pay for such shortfall.

Article 17. The funds of the International Fund

1. The funds of the International Fund may only be used for the purposes set out in Article 8, paragraph 2.

2. The International Fund shall exercise the highest degree of prudence in the management and preservation of its funds. The funds shall be preserved in accordance with the Guidelines on Investment determined by the Conference of Parties under Article 9, subparagraph (h). Investments may only be made in States Parties.

3. Accounts shall be maintained for the funds of the International Fund. The auditors of the International Fund shall review the accounts and report on them to the Conference of Parties.

4. Where the International Fund is not able to meet valid compensation claims because insufficient contributions have been collected, it may obtain credits from financial institutions for the payment of compensation and may grant security for such credits.

Chapter IV. Compensation from the International Fund

Article 18. Compensation

1. The International Fund shall, under the same conditions as are applicable to the liability of the operator, provide compensation to persons suffering damage in the territory of a State Party. Where the damage is caused by an aircraft in flight on a flight other than an international flight, compensation shall only be provided if that State Party has made

a declaration according to Article 2, paragraph 2. Compensation shall only be paid to the extent that the total amount of damages exceeds the limits according to Article 4.

2. The maximum amount of compensation available from the International Fund shall be 3 000 000 000 Special Drawing Rights for each event. Payments made according to paragraph 3 of this Article and distribution of amounts recovered according to Article 25 shall be in addition to the maximum amount for compensation.

3. If and to the extent that the Conference of Parties determines and for the period that it so determines that insurance in respect of the damage covered by this Convention is wholly or partially unavailable with respect to amounts of coverage or the risks covered, or is only available at a cost incompatible with the continued operation of air transport generally, the International Fund may, at its discretion, in respect of future events causing damage compensable under this Convention, pay the damages for which the operators are liable under Articles 3 and 4 and such payment shall discharge such liability of the operators. The Conference of Parties shall decide on a fee, the payment of which by the operators, for the period covered, shall be a condition for the International Fund taking the action specified in this paragraph.

Article 19. Advance payments and other measures

1. Subject to the decision of the Conference of Parties and in accordance with the Guidelines for Compensation, the International Fund may make advance payments without delay to natural persons who may be entitled to claim compensation under this Convention, in order to meet their immediate economic needs. Such advance payments shall not constitute recognition of a right to compensation and may be offset against any amount subsequently payable by the International Fund.

2. Subject to the decision of the Conference of Parties and in accordance with the Guidelines for Compensation, the International Fund may also take other measures to minimize or mitigate damage caused by an event.

Chapter V. Special provisions on compensation and recourse

Article 20. Exoneration

If the operator or the International Fund proves that the damage was caused, or contributed to, by an act or omission of a claimant, or the person from whom he or she derives his or her rights, done with intent or recklessly and with knowledge that damage would probably result, the operator or the International Fund shall be wholly or partly exonerated from its liability to that claimant to the extent that such act or omission caused or contributed to the damage.

Article 21. Court costs and other expenses

1. The limits prescribed in Articles 4 and 18, paragraph 2, shall not prevent the court from awarding, in accordance with its own law, in addition, the whole or part of the court costs and of the other expenses of the litigation incurred by the claimant, including interest.

2. Paragraph 1 shall not apply if the amount of the damages awarded, excluding court costs and other expenses of the litigation, does not exceed the sum which the operator has

offered in writing to the claimant within a period of six months from the date of the event causing the damage, or before the commencement of the action, whichever is the later.

Article 22. Priority of compensation

If the total amount of the damages to be paid exceeds the amounts available according to Articles 4 and 18, paragraph 2, the total amount shall be awarded preferentially to meet proportionately the claims in respect of death, bodily injury and mental injury, in the first instance. The remainder, if any, of the total amount payable shall be awarded proportionately among the claims in respect of other damage.

Article 23. Additional compensation

1. To the extent the total amount of damages exceeds the aggregate amount payable under Articles 4 and 18, paragraph 2, a person who has suffered damage may claim additional compensation from the operator.

2. The operator shall be liable for such additional compensation to the extent the person claiming compensation proves that the operator or its employees have contributed to the occurrence of the event by an act or omission done with intent to cause damage or recklessly and with knowledge that damage would probably result.

3. Where an employee has contributed to the damage, the operator shall not be liable for any additional compensation under this Article if it proves that an appropriate system for the selection and monitoring of its employees has been established and implemented.

4. An operator or, if it is a legal person, its senior management shall be presumed not to have been reckless if it proves that it has established and implemented a system to comply with the security requirements specified pursuant to Annex 17 to the Convention on International Civil Aviation (Chicago, 1944) in accordance with the law of the State Party in which the operator has its principal place of business, or if it has no such place of business, its permanent residence.

Article 24. Right of recourse of the operator

The operator shall have a right of recourse against:

(*a*) any person who has committed, organized or financed the act of unlawful interference; and

(*b*) any other person.

Article 25. Right of recourse of the International Fund

The International Fund shall have a right of recourse against:

(*a*) any person who has committed, organized or financed the act of unlawful interference;

(*b*) the operator subject to the conditions set out in Article 23; and

(*c*) any other person.

Article 26. Restrictions on rights of recourse

1. The rights of recourse under Article 24, subparagraph (b), and Article 25, subparagraph (c), shall only arise to the extent that the person against whom recourse is sought could have been covered by insurance available on a commercially reasonable basis.

2. Paragraph 1 shall not apply if the person against whom recourse is sought under Article 25, subparagraph (c) has contributed to the occurrence of the event by an act or omission done recklessly and with knowledge that damage would probably result.

3. The International Fund shall not pursue any claim under Article 25, subparagraph (c) if the Conference of Parties determines that to do so would give rise to the application of Article 18, paragraph 3.

Article 27. Exoneration from recourse

No right of recourse shall lie against an owner, lessor, or financier retaining title of or holding security in an aircraft, not being an operator, or against a manufacturer if that manufacturer proves that it has complied with the mandatory requirements in respect of the design of the aircraft, its engines or components.

CHAPTER VI. ASSISTANCE IN CASE OF EVENTS IN STATES NON-PARTY

Article 28. Assistance in case of events in States non-Party

Where an operator, which has its principal place of business, or if it has no such place of business, its permanent residence, in a State Party, is liable for damage occurring in a State non-Party, the Conference of Parties may decide, on a case by case basis, that the International Fund shall provide financial support to that operator. Such support may only be provided:

(*a*) in respect of damage that would have fallen under the Convention if the State non-Party had been a State Party;

(*b*) if the State non-Party agrees in a form acceptable to the Conference of Parties to be bound by the provisions of this Convention in respect of the event giving rise to such damage;

(*c*) up to the maximum amount for compensation set out in Article 18, paragraph 2; and

(*d*) if the solvency of the operator liable is threatened even if support is given, where the Conference of Parties determines that the operator has sufficient arrangements protecting its solvency.

CHAPTER VII. EXERCISE OF REMEDIES AND RELATED PROVISIONS

Article 29. Exclusive remedy

1. Without prejudice to the question as to who are the persons who have the right to bring suit and what are their respective rights, any action for compensation for damage to a third party due to an act of unlawful interference, however founded, whether under this Convention or in tort or in contract or otherwise, can only be brought against the operator and, if need be, against the International Fund and shall be subject to the conditions and

limits of liability set out in this Convention. No claims by a third party shall lie against any other person for compensation for such damage.

2. Paragraph 1 shall not apply to an action against a person who has committed, organized or financed an act of unlawful interference.

Article 30. Conversion of Special Drawing Rights

The sums mentioned in terms of Special Drawing Right in this Convention shall be deemed to refer to the Special Drawing Right as defined by the International Monetary Fund. Conversion of the sums into national currencies shall, in case of judicial proceedings, be made according to the value of such currencies in terms of the Special Drawing Right at the date of the judgement. The value in a national currency shall be calculated in accordance with the method of valuation applied by the International Monetary Fund for its operations and transactions. The value in a national currency, of a State Party which is not a Member of the International Monetary Fund, shall be calculated in a manner determined by that State to express in the national currency of the State Party as far as possible the same real value as the amounts in Article 4.

Article 31. Review of limits

1. Subject to paragraph 2 of this Article, the sums prescribed in Articles 4 and 18, paragraph 2, shall be reviewed by the Director of the International Fund, by reference to an inflation factor which corresponds to the accumulated rate of inflation since the previous revision or in the first instance since the date of entry into force of this Convention. The measure of the rate of inflation to be used in determining the inflation factor shall be the weighted average of the annual rates of increase or decrease in the Consumer Price Indices of the States whose currencies comprise the Special Drawing Right mentioned in Article 30.

2. If the review referred to in the preceding paragraph concludes that the inflation factor has exceeded 10 per cent, the Director shall inform the Conference of Parties of a revision of the limits of liability. Any such revision shall become effective six months after the meeting of the Conference of Parties, unless a majority of the States Parties register their disapproval. The Director shall immediately notify all States Parties of the coming into force of any revision.

Article 32. Forum

1. Subject to paragraph 2 of this Article, actions for compensation under the provisions of this Convention may be brought only before the courts of the State Party in whose territory the damage occurred.

2. Where damage occurs in more than one State Party, actions under the provisions of this Convention may be brought only before the courts of the State Party the territory of which the aircraft was in or about to leave when the event occurred.

3. Without prejudice to paragraphs 1 and 2 of this Article, application may be made in any State Party for such provisional measures, including protective measures, as may be available under the law of that State.

Article 33. Intervention by the International Fund

1. Each State Party shall ensure that the International Fund has the right to intervene in proceedings brought against the operator in its courts.

2. Except as provided in paragraph 3 of this Article, the International Fund shall not be bound by any judgement or decision in proceedings to which it has not been a party or in which it has not intervened.

3. If an action is brought against the operator in a State Party, each party to such proceedings shall be entitled to notify the International Fund of the proceedings. Where such notification has been made in accordance with the law of the court seised and in such time that the International Fund had time to intervene in the proceedings, the International Fund shall be bound by a judgement or decision in proceedings even if it has not intervened.

Article 34. Recognition and enforcement of judgements

1. Subject to the provisions of this Article, judgements entered by a competent court under Article 32 after trial, or by default, shall when they are enforceable in the State Party of that court be enforceable in any other State Party as soon as the formalities required by that State Party have been complied with.

2. The merits of the case shall not be reopened in any application for recognition or enforcement under this Article.

3. Recognition and enforcement of a judgement may be refused if:

(*a*) its recognition or enforcement would be manifestly contrary to public policy in the State Party where recognition or enforcement is sought;

(*b*) the defendant was not served with notice of the proceedings in such time and manner as to allow him or her to prepare and submit a defence;

(*c*) it is in respect of a cause of action which had already, as between the same parties, formed the subject of a judgement or an arbitral award which is recognized as final and conclusive under the law of the State Party where recognition or enforcement is sought;

(*d*) the judgement has been obtained by fraud of any of the parties; or

(*e*) the right to enforce the judgement is not vested in the person by whom the application is made.

4. Recognition and enforcement of a judgement may also be refused to the extent that the judgement awards damages, including exemplary or punitive damages, that do not compensate a third party for actual harm suffered.

5. Where a judgement is enforceable, payment of any court costs and other expenses incurred by the plaintiff, including interest recoverable under the judgement, shall also be enforceable.

Article 35. Regional and multilateral agreements on the recognition and enforcement of judgements

1. States Parties may enter into regional and multilateral agreements regarding the recognition and enforcement of judgements consistent with the objectives of this Conven-

tion, provided that such agreements do not result in a lower level of protection for any third party or defendant than that provided for in this Convention.

2. States Parties shall inform each other, through the Depositary, of any such regional or multilateral agreements that they have entered into before or after the date of entry into force of this Convention.

3. The provisions of this Chapter shall not affect the recognition or enforcement of any judgement pursuant to such agreements.

Article 36. Period of limitation

1. The right to compensation under Article 3 shall be extinguished if an action is not brought within two years from the date of the event which caused the damage.

2. The right to compensation under Article 18 shall be extinguished if an action is not brought, or a notification pursuant to Article 33, paragraph 3, is not made, within two years from the date of the event which caused the damage.

3. The method of calculating such two-year period shall be determined in accordance with the law of the court seised of the case.

Article 37. Death of person liable

In the event of the death of the person liable, an action for damages lies against those legally representing his or her estate and is subject to the provisions of this Convention.

Chapter VIII. Final clauses

Article 38. Signature, ratification, acceptance, approval or accession

1. This Convention shall be open for signature in Montréal on 2 May 2009 by States participating in the International Conference on Air Law held at Montréal from 20 April to 2 May 2009. After 2 May 2009, the Convention shall be open to all States for signature at the headquarters of the International Civil Aviation Organization in Montréal until it enters into force in accordance with Article 40.

2. This Convention shall be subject to ratification by States which have signed it.

3. Any State which does not sign this Convention may accept, approve or accede to it at any time.

4. Instruments of ratification, acceptance, approval or accession shall be deposited with the International Civil Aviation Organization, which is hereby designated the Depositary.

Article 39. Regional Economic Integration Organizations

1. A Regional Economic Integration Organization which 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 State Party, to the extent that the Organization has competence over matters governed by this Convention. Where the number of States Parties is relevant in this Convention, including in respect

of Article 10, the Regional Economic Integration Organization shall not count as a State Party in addition to its Member States which are States Parties.

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 under this paragraph.

3. Any reference to a "State Party" or "States Parties" in this Convention applies equally to a Regional Economic Integration Organization where the context so requires.

Article 40. Entry into force

1. This Convention shall enter into force on the one hundred and eightieth day after the deposit of the thirty-fifth instrument of ratification, acceptance, approval or accession on condition, however, that the total number of passengers departing in the previous year from airports in the States that have ratified, accepted, approved or acceded is at least 750 000 000 as appears from the declarations made by ratifying, accepting, approving or acceding States. If, at the time of deposit of the thirty-fifth instrument of ratification, acceptance, approval or accession this condition has not been fulfilled, the Convention shall not come into force until the one hundred and eightieth day after this condition shall have been satisfied. An instrument deposited by a Regional Economic Integration Organization shall not be counted for the purpose of this paragraph.

2. This Convention shall come into force for each State ratifying, accepting, approving or acceding after the deposit of the last instrument of ratification, acceptance, approval or accession necessary for entry into force of this Convention on the ninetieth day after the deposit of its instrument of ratification, acceptance, approval or accession.

3. At the time of deposit of its instrument of ratification, acceptance, approval or accession a State shall declare the total number of passengers that departed on international commercial flights from airports in its territory in the previous year. The declaration at Article 2, paragraph 2, shall include the number of domestic passengers in the previous year and that number shall be counted for the purposes of determining the total number of passengers required under paragraph 1.

4. In making such declarations a State shall endeavour not to count a passenger that has already departed from an airport in a State Party on a journey including one or more stops or transfers. Such declarations may be amended from time to time to reflect passenger numbers in subsequent years. If a declaration is not amended, the number of passengers shall be presumed to be constant.

Article 41. Denunciation

1. Any State Party may denounce this Convention by written notification to the Depositary.

2. Denunciation shall take effect one year following the date on which notification is received by the Depositary; in respect of damage contemplated in Article 3 arising from

events which occurred before the expiration of the one year period and the contributions required to cover such damage, the Convention shall continue to apply as if the denunciation had not been made.

Article 42. Termination

1. This Convention shall cease to be in force on the date when the number of States Parties falls below eight or on such earlier date as the Conference of Parties shall decide by a two-thirds majority of States that have not denounced the Convention.

2. States which are bound by this Convention on the day before the date it ceases to be in force shall enable the International Fund to exercise its functions as described under Article 43 of this Convention and shall, for that purpose only, remain bound by this Convention.

Article 43. Winding up of the International Fund

1. If this Convention ceases to be in force, the International Fund shall nevertheless:

(*a*) meet its obligations in respect of any event occurring before the Convention ceased to be in force and of any credits obtained pursuant to paragraph 4 of Article 17 while the Convention was still in force; and

(*b*) be entitled to exercise its rights to contributions to the extent that these contributions are necessary to meet the obligations under subparagraph (a), including expenses for the administration of the International Fund necessary for this purpose.

2. The Conference of Parties shall take all appropriate measures to complete the winding up of the International Fund including the distribution in an equitable manner of any remaining assets for a purpose consonant with the aims of this Convention or for the benefit of those persons who have contributed to the International Fund.

3. For the purposes of this Article the International Fund shall remain a legal person.

Article 44. Relationship to other treaties

1. The rules of this Convention shall prevail over any rules in the following instruments which would otherwise be applicable to damage covered by this Convention:

(*a*) the Convention on Damage Caused by Foreign Aircraft to Third Parties on the Surface, Signed at Rome on 7 October 1952; or

(*b*) the Protocol to Amend the Convention on Damage Caused by Foreign Aircraft to Third Parties on the Surface, Signed at Rome on 7 October 1952, Signed at Montréal on 23 September 1978.

Article 45. States with more than one system of law

1. If a State has two or more territorial units in which different systems of law are applicable in relation to matters dealt with in this Convention, it may at the time of signature, ratification, acceptance, approval or accession declare that this Convention shall extend to all its territorial units or only to one or more of them and may modify this declaration by submitting another declaration at any time.

2. Any such declaration shall be notified to the Depositary and shall state expressly the territorial units to which the Convention applies.

3. For a declaration made under Article 2, paragraph 2, by a State Party having two or more territorial units in which different systems of law are applicable, it may declare that this Convention shall apply to damage to third parties that occurs in all its territorial units or in one or more of them and may modify this declaration by submitting another declaration at any time.

4. In relation to a State Party which has made a declaration under this Article:

(*a*) the reference in Article 6 to "the law of the State" shall be construed as referring to the law of the relevant territorial unit of that State; and

(*b*) references in Article 30 to "national currency" shall be construed as referring to the currency of the relevant territorial unit of that State.

Article 46. Reservations and declarations

1. No reservation may be made to this Convention but declarations authorized by Article 2, paragraph 2, Article 39, paragraph 2, Article 40, paragraph 3, and Article 45 may be made in accordance with these provisions.

2. Any declaration or any withdrawal of a declaration made under this Convention shall be notified in writing to the Depositary.

Article 47. Functions of the Depositary

The Depositary shall promptly notify all signatories and States Parties of:

(*a*) each new signature of this Convention and the date thereof;

(*b*) each deposit of an instrument of ratification, acceptance, approval or accession and the date thereof;

(*c*) the date of entry into force of this Convention;

(*d*) the date of the coming into force of any revision of the limits of liability established under this Convention;

(*e*) each declaration or modification thereto, together with the date thereof;

(*f*) the withdrawal of any declaration and the date thereof;

(*g*) any denunciation together with the date thereof and the date on which it takes effect; and

(*h*) the termination of the Convention.

In witness whereof the undersigned Plenipotentiaries, having been duly authorized, have signed this Convention.

Done at Montréal on the 2nd day of May of the year two thousand and nine in the English, Arabic, Chinese, French, Russian and Spanish languages, all texts being equally authentic, such authenticity to take effect upon verification by the Secretariat of the Conference under the authority of the President of the Conference within ninety days hereof as to the conformity of the texts with one another. This Convention shall remain deposited in the archives of the International Civil Aviation Organization, and certified copies thereof

shall be transmitted by the Depositary to all Contracting States to this Convention, as well as to all States Parties to the Convention and Protocol referred to in Article 44.

(b) Convention on Compensation for Damage Caused by Aircraft to Third Parties. Montréal, 2 May 2009*

The States Parties to this Convention,

Recognizing the need to ensure adequate compensation for third parties who suffer damage resulting from events involving an aircraft in flight;

Recognizing the need to modernize the Convention on Damage Caused by Foreign Aircraft to Third Parties on the Surface, Signed at Rome on 7 October 1952, and the Protocol to Amend the Convention on Damage Caused by Foreign Aircraft to Third Parties on the Surface, Signed at Rome on 7 October 1952, Signed at Montreal on 23 September 1978;

Recognizing the importance of ensuring protection of the interests of third-party victims and the need for equitable compensation, as well as the need to enable the continued stability of the aviation industry;

Reaffirming the desirability of the orderly development of international air transport operations and the smooth flow of passengers, baggage and cargo in accordance with the principles and objectives of the Convention on International Civil Aviation, done at Chicago on 7 December 1944; and

Convinced that collective State action for further harmonization and codification of certain rules governing the compensation of third parties who suffer damage resulting from events involving aircraft in flight through a new Convention is the most desirable and effective means of achieving an equitable balance of interests;

Have agreed as follows:

Chapter I. Principles

Article 1. Definitions

For the purposes of this Convention:

(*a*) an "act of unlawful interference" means an act which is defined as an offence in the Convention for the Suppression of Unlawful Seizure of Aircraft, Signed at The Hague on 16 December 1970, or the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, Signed at Montreal on 23 September 1971, and any amendment in force at the time of the event;

(*b*) an "event" occurs when damage is caused by an aircraft in flight other than as a result of an act of unlawful interference;

(*c*) an aircraft is considered to be "in flight" at any time from the moment when all its external doors are closed following embarkation or loading until the moment when any such door is opened for disembarkation or unloading;

---

* Adopted at the International Conference on Air Law held under the auspices of the International Civil Aviation Organization in Montréal from 20 April to 2 May 2009

(*d*) "international flight" means any flight whose place of departure and whose intended destination are situated within the territories of two States, whether or not there is a break in the flight, or within the territory of one State if there is an intended stopping place in the territory of another State;

(*e*) "maximum mass" means the maximum certificated take-off mass of the aircraft, excluding the effect of lifting gas when used;

(*f*) "operator" means the person who makes use of the aircraft, provided that if control of the navigation of the aircraft is retained by the person from whom the right to make use of the aircraft is derived, whether directly or indirectly, that person shall be considered the operator. A person shall be considered to be making use of an aircraft when he or she is using it personally or when his or her servants or agents are using the aircraft in the course of their employment, whether or not within the scope of their authority;

(*g*) "person" means any natural or legal person, including a State;

(*h*) "State Party" means a State for which this Convention is in force; and

(*i*) "third party" means a person other than the operator, passenger or consignor or consignee of cargo.

Article 2. Scope

1. This Convention applies to damage to third parties which occurs in the territory of a State Party caused by an aircraft in flight on an international flight, other than as a result of an act of unlawful interference.

2. If a State Party so declares to the Depositary, this Convention shall also apply where an aircraft in flight other than on an international flight causes damage in the territory of that State, other than as a result of an act of unlawful interference.

3. For the purposes of this Convention:

(*a*) damage to a ship in or an aircraft above the High Seas or the Exclusive Economic Zone shall be regarded as damage occurring in the territory of the State in which it is registered; however, if the operator of the aircraft has its principal place of business in the territory of a State other than the State of Registry, the damage to the aircraft shall be regarded as having occurred in the territory of the State in which it has its principal place of business; and

(*b*) damage to a drilling platform or other installation permanently fixed to the soil in the Exclusive Economic Zone or the Continental Shelf shall be regarded as having occurred in the territory of the State which has jurisdiction over such platform or installation in accordance with international law including the United Nations Convention on the Law of the Sea, done at Montego Bay on 10 December 1982.

4. This Convention shall not apply to damage caused by State aircraft. Aircraft used in military, customs and police services shall be deemed to be State aircraft.

Chapter II. Liability of the operator and related issues

Article 3. Liability of the operator

1. The operator shall be liable for damage sustained by third parties upon condition only that the damage was caused by an aircraft in flight.

2. There shall be no right to compensation under this Convention if the damage is not a direct consequence of the event giving rise thereto, or if the damage results from the mere fact of passage of the aircraft through the airspace in conformity with existing air traffic regulations.

3. Damages due to death, bodily injury and mental injury shall be compensable. Damages due to mental injury shall be compensable only if caused by a recognizable psychiatric illness resulting either from bodily injury or from direct exposure to the likelihood of imminent death or bodily injury.

4. Damage to property shall be compensable.

5. Environmental damage shall be compensable, in so far as such compensation is provided for under the law of the State Party in the territory of which the damage occurred.

6. No liability shall arise under this Convention for damage caused by a nuclear incident as defined in the Paris Convention on Third Party Liability in the Field of Nuclear Energy (29 July 1960) or for nuclear damage as defined in the Vienna Convention on Civil Liability for Nuclear Damage (21 May 1963), and any amendment or supplements to these Conventions in force at the time of the event.

7. Punitive, exemplary or any other non-compensatory damages shall not be recoverable.

8. An operator who would otherwise be liable under the provisions of this Convention shall not be liable if the damage is the direct consequence of armed conflict or civil disturbance.

Article 4. Limit of the operator's liability

1. The liability of the operator arising under Article 3 shall not exceed for an event the following limit based on the mass of the aircraft involved:

(*a*) 750 000 Special Drawing Rights for aircraft having a maximum mass of 500 kilogrammes or less;

(*b*) 1 500 000 Special Drawing Rights for aircraft having a maximum mass of more than 500 kilogrammes but not exceeding 1 000 kilogrammes;

(*c*) 3 000 000 Special Drawing Rights for aircraft having a maximum mass of more than 1 000 kilogrammes but not exceeding 2 700 kilogrammes;

(*d*) 7 000 000 Special Drawing Rights for aircraft having a maximum mass of more than 2 700 kilogrammes but not exceeding 6 000 kilogrammes;

(*e*) 18 000 000 Special Drawing Rights for aircraft having a maximum mass of more than 6 000 kilogrammes but not exceeding 12 000 kilogrammes;

(*f*) 80 000 000 Special Drawing Rights for aircraft having a maximum mass of more than 12 000 kilogrammes but not exceeding 25 000 kilogrammes;

(*g*) 150 000 000 Special Drawing Rights for aircraft having a maximum mass of more than 25 000 kilogrammes but not exceeding 50 000 kilogrammes;

(*h*) 300 000 000 Special Drawing Rights for aircraft having a maximum mass of more than 50 000 kilogrammes but not exceeding 200 000 kilogrammes;

(*i*) 500 000 000 Special Drawing Rights for aircraft having a maximum mass of more than 200 000 kilogrammes but not exceeding 500 000 kilogrammes;

(*j*) 700 000 000 Special Drawing Rights for aircraft having a maximum mass of more than 500 000 kilogrammes.

2. If an event involves two or more aircraft operated by the same operator, the limit of liability in respect of the aircraft with the highest maximum mass shall apply.

3. The limits in this Article shall only apply if the operator proves that the damage:

(*a*) was not due to its negligence or other wrongful act or omission or that of its servants or agents; or

(*b*) was solely due to the negligence or other wrongful act or omission of another person.

Article 5. Priority of compensation

If the total amount of the damages to be paid exceeds the amounts available according to Article 4, paragraph 1, the total amount shall be awarded preferentially to meet proportionately the claims in respect of death, bodily injury and mental injury, in the first instance. The remainder, if any, of the total amount payable shall be awarded proportionately among the claims in respect of other damage.

Article 6. Events involving two or more operators

1. Where two or more aircraft have been involved in an event causing damage to which this Convention applies, the operators of those aircraft are jointly and severally liable for any damage suffered by a third party.

2. If two or more operators are so liable, the recourse between them shall depend on their respective limits of liability and their contribution to the damage.

3. No operator shall be liable for a sum in excess of the limit, if any, applicable to its liability.

Article 7. Court costs and other expenses

1. The court may award, in accordance with its own law, the whole or part of the court costs and of the other expenses of the litigation incurred by the claimant, including interest.

2. Paragraph 1 shall not apply if the amount of the damages awarded, excluding court costs and other expenses of the litigation, does not exceed the sum which the operator has offered in writing to the claimant within a period of six months from the date of the event causing the damage, or before the commencement of the action, whichever is the later.

Article 8. Advance payments

If required by the law of the State where the damage occurred, the operator shall make advance payments without delay to natural persons who may be entitled to claim compensation under this Convention, in order to meet their immediate economic needs. Such advance payments shall not constitute a recognition of liability and may be offset against any amount subsequently payable as damages by the operator.

Article 9. Insurance

1. Having regard to Article 4, States Parties shall require their operators to maintain adequate insurance or guarantee covering their liability under this Convention.

2. An operator may be required by the State Party in or into which it operates to furnish evidence that it maintains adequate insurance or guarantee. In doing so, the State Party shall apply the same criteria to operators of other States Parties as it applies to its own operators.

Chapter III. Exoneration and recourse

Article 10. Exoneration

If the operator proves that the damage was caused, or contributed to, by the negligence or other wrongful act or omission of a claimant, or the person from whom he or she derives his or her rights, the operator shall be wholly or partly exonerated from its liability to that claimant to the extent that such negligence or wrongful act or omission caused or contributed to the damage.

Article 11. Right of recourse

Subject to Article 13, nothing in this Convention shall prejudice the question whether a person liable for damage in accordance with its provisions has a right of recourse against any person.

Chapter IV. Exercise of remedies and related provisions

Article 12. Exclusive remedy

1. Any action for compensation for damage to third parties caused by an aircraft in flight brought against the operator, or its servants or agents, however founded, whether under this Convention or in tort or otherwise, can only be brought subject to the conditions set out in this Convention without prejudice to the question as to who are the persons who have the right to bring suit and what are their respective rights.

2. Article 3, paragraphs 6, 7 and 8, shall apply to any other person from whom the damages specified in those paragraphs would otherwise be recoverable or compensable, whether under this Convention or in tort or otherwise.

Article 13. Exclusion of liability

Neither the owner, lessor or financier retaining title or holding security of an aircraft, not being an operator, nor their servants or agents, shall be liable for damages under this Convention or the law of any State Party relating to third party damage.

Article 14. Conversion of Special Drawing Rights

The sums mentioned in terms of Special Drawing Right in this Convention shall be deemed to refer to the Special Drawing Right as defined by the International Monetary Fund. Conversion of the sums into national currencies shall, in case of judicial proceedings, be made according to the value of such currencies in terms of the Special Drawing Right at the date of the judgement. The value in a national currency shall be calculated in accordance with the method of valuation applied by the International Monetary Fund for its operations and transactions. The value in a national currency, of a State Party which is not a Member of the International Monetary Fund, shall be calculated in a manner determined by that State to express in the national currency of the State Party as far as possible the same real value as the amounts in Article 4, paragraph 1.

Article 15. Review of limits

1. Subject to paragraph 2 of this Article, the sums prescribed in Article 4, paragraph 1, shall be reviewed by the Depositary by reference to an inflation factor which corresponds to the accumulated rate of inflation since the previous revision or in the first instance since the date of entry into force of this Convention. The measure of the rate of inflation to be used in determining the inflation factor shall be the weighted average of the annual rates of increase or decrease in the Consumer Price Indices of the States whose currencies comprise the Special Drawing Right mentioned in Article 14.

2. If the review referred to in the preceding paragraph concludes that the inflation factor has exceeded 10 per cent, the Depositary shall notify the States Parties of a revision of the limits of liability. Any such revision shall become effective six months after the notification to the States Parties, unless a majority of the States Parties register their disapproval. The Depositary shall immediately notify all States Parties of the coming into force of any revision.

Article 16. Forum

1. Subject to paragraph 2 of this Article, actions for compensation under the provisions of this Convention may be brought only before the courts of the State Party in whose territory the damage occurred.

2. Where damage occurs in more than one State Party, actions under the provisions of this Convention may be brought only before the courts of the State Party the territory of which the aircraft was in or about to leave when the event occurred.

3. Without prejudice to paragraphs 1 and 2 of this Article, application may be made in any State Party for such provisional measures, including protective measures, as may be available under the law of that State.

Article 17. Recognition and enforcement of judgements

1. Subject to the provisions of this Article, judgements entered by a competent court under Article 16 after trial, or by default, shall when they are enforceable in the State Party of that court be enforceable in any other State Party as soon as the formalities required by that State Party have been complied with.

2. The merits of the case shall not be reopened in any application for recognition or enforcement under this Article.

3. Recognition and enforcement of a judgement may be refused if:

(*a*) its recognition or enforcement would be manifestly contrary to public policy in the State Party where recognition or enforcement is sought;

(*b*) the defendant was not served with notice of the proceedings in such time and manner as to allow him or her to prepare and submit a defence;

(*c*) it is in respect of a cause of action which had already, as between the same parties, formed the subject of a judgement or an arbitral award which is recognized as final and conclusive under the law of the State Party where recognition or enforcement is sought;

(*d*) the judgement has been obtained by fraud of any of the parties; or

(*e*) the right to enforce the judgement is not vested in the person by whom the application is made.

4. Recognition and enforcement of a judgement may also be refused to the extent that the judgement awards damages, including exemplary or punitive damages, that do not compensate a third party for actual harm suffered.

5. Where a judgement is enforceable, payment of any court costs and other expenses incurred by the plaintiff, including interest recoverable under the judgement, shall also be enforceable.

Article 18. Regional and multilateral agreements on the recognition and enforcement of judgements

1. States Parties may enter into regional and multilateral agreements regarding the recognition and enforcement of judgements consistent with the objectives of this Convention, provided that such agreements do not result in a lower level of protection for any third party or defendant than that provided for in this Convention.

2. States Parties shall inform each other, through the Depositary, of any such regional or multilateral agreements that they have entered into before or after the date of entry into force of this Convention.

3. The provisions of this Chapter shall not affect the recognition or enforcement of any judgement pursuant to such agreements.

Article 19. Period of limitation

1. The right to compensation under Article 3 shall be extinguished if an action is not brought within two years from the date of the event which caused the damage.

2. The method of calculating such two-year period shall be determined in accordance with the law of the court seised of the case.

Article 20. Death of person liable

In the event of the death of the person liable, an action for damages lies against those legally representing his or her estate and is subject to the provisions of this Convention.

Chapter V. Final clauses

Article 21. Signature, ratification, acceptance, approval or accession

1. This Convention shall be open for signature in Montréal on 2 May 2009 by States participating in the International Conference on Air Law held at Montréal from 20 April to 2 May 2009. After 2 May 2009, the Convention shall be open to all States for signature at the Headquarters of the International Civil Aviation Organization in Montréal until it enters into force in accordance with Article 23.

2. This Convention shall be subject to ratification by States which have signed it.

3. Any State which does not sign this Convention may accept, approve or accede to it at any time.

4. Instruments of ratification, acceptance, approval or accession shall be deposited with the International Civil Aviation Organization, which is hereby designated the Depositary.

Article 22. Regional Economic Integration Organizations

1. A Regional Economic Integration Organization which 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 State Party to the extent that that Organization has competence over matters governed by this Convention.

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 under this paragraph.

3. Any reference to a "State Party" or "States Parties" in this Convention applies equally to a Regional Economic Integration Organization where the context so requires.

Article 23. Entry into force

1. This Convention shall enter into force on the sixtieth day following the date of deposit of the thirty-fifth instrument of ratification, acceptance, approval or accession with the Depositary between the States which have deposited such instruments. An instrument deposited by a Regional Economic Integration Organization shall not be counted for the purpose of this paragraph.

2. For other States and for other Regional Economic Integration Organizations, this Convention shall take effect sixty days following the date of deposit of the instrument of ratification, acceptance, approval or accession.

Article 24. Denunciation

1. Any State Party may denounce this Convention by written notification to the Depositary.

2. Denunciation shall take effect one hundred and eighty days following the date on which notification is received by the Depositary; in respect of damage contemplated in Article 3 arising from an event which occurred before the expiration of the one hundred and eighty day period, the Convention shall continue to apply as if the denunciation had not been made.

Article 25. Relationship to other treaties

The rules of this Convention shall prevail over any rules in the following instruments which would otherwise be applicable to damage covered by this Convention:

(*a*) the Convention on Damage Caused by Foreign Aircraft to Third Parties on the Surface, Signed at Rome on 7 October 1952; or

(*b*) the Protocol to Amend the Convention on Damage Caused by Foreign Aircraft to Third Parties on the Surface, Signed at Rome on 7 October 1952, Signed at Montréal on 23 September 1978.

Article 26. States with more than one system of law

1. If a State has two or more territorial units in which different systems of law are applicable in relation to matters dealt with in this Convention, it may at the time of signature, ratification, acceptance, approval or accession declare that this Convention shall extend to all its territorial units or only to one or more of them and may modify this declaration by submitting another declaration at any time.

2. Any such declaration shall be notified to the Depositary and shall state expressly the territorial units to which this Convention applies.

3. For a declaration made under Article 2, paragraph 2, by a State Party having two or more territorial units in which different systems of law are applicable, it may declare that this Convention shall apply to damage to third parties that occurs in all its territorial units or in one or more of them and may modify this declaration by submitting another declaration at any time.

4. In relation to a State Party which has made a declaration under this Article:

(*a*) the reference in Article 8 to "the law of the State" shall be construed as referring to the law of the relevant territorial unit of that State; and

(*b*) references in Article 14 to "national currency" shall be construed as referring to the currency of the relevant territorial unit of that State.

Article 27. Reservations and declarations

1. No reservation may be made to this Convention but declarations authorized by Article 2, paragraph 2, Article 22, paragraph 2, and Article 26 may be made in accordance with these provisions.

2. Any declaration or any withdrawal of a declaration made under this Convention shall be notified in writing to the Depositary.

Article 28. Functions of the Depositary

The Depositary shall promptly notify all signatories and States Parties of:

(*a*) each new signature of this Convention and the date thereof;

(*b*) each deposit of an instrument of ratification, acceptance, approval or accession and the date thereof;

(*c*) each declaration and the date thereof;

(*d*) the modification or withdrawal of any declaration and the date thereof;

(*e*) the date of entry into force of this Convention;

(*f*) the date of the coming into force of any revision of the limits of liability established under this Convention; and

(*g*) any denunciation with the date thereof and the date on which it takes effect.

In witness whereof the undersigned Plenipotentiaries, having been duly authorized, have signed this Convention.

Done at Montréal on the 2nd day of May of the year two thousand and nine in the English, Arabic, Chinese, French, Russian and Spanish languages, all texts being equally authentic, such authenticity to take effect upon verification by the Secretariat of the Conference under the authority of the President of the Conference within ninety days hereof as to the conformity of the texts with one another. This Convention shall remain deposited in the archives of the International Civil Aviation Organization, and certified copies thereof shall be transmitted by the Depositary to all Contracting States to this Convention, as well as to all States Parties to the Conventions and Protocol referred to in Article 25.

2. Food and Agriculture Organization

Agreement on Port State Measures to Prevent, Deter, and Eliminate Illegal, Unreported and Unregulated Fishing. Rome, 22 November 2009*

Preamble

The Parties to this Agreement,

Deeply concerned about the continuation of illegal, unreported and unregulated fishing and its detrimental effect upon fish stocks, marine ecosystems and the livelihoods of legitimate fishers, and the increasing need for food security on a global basis,

Conscious of the role of the port State in the adoption of effective measures to promote the sustainable use and the long-term conservation of living marine resources,

Recognizing that measures to combat illegal, unreported and unregulated fishing should build on the primary responsibility of flag States and use all available jurisdiction in

* Adopted at the Food and Agriculture Organization Conference at its 36th Session on 22 November 2009

accordance with international law, including port State measures, coastal State measures, market related measures and measures to ensure that nationals do not support or engage in illegal, unreported and unregulated fishing,

Recognizing that port State measures provide a powerful and cost-effective means of preventing, deterring and eliminating illegal, unreported and unregulated fishing,

Aware of the need for increasing coordination at the regional and interregional levels to combat illegal, unreported and unregulated fishing through port State measures,

Acknowledging the rapidly developing communications technology, databases, networks and global records that support port State measures,

Recognizing the need for assistance to developing countries to adopt and implement port State measures,

Taking note of the calls by the international community through the United Nations System, including the United Nations General Assembly and the Committee on Fisheries of the Food and Agriculture Organization of the United Nations, hereinafter referred to as 'FAO,' for a binding international instrument on minimum standards for port State measures, based on the 2001 FAO International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing and the 2005 FAO Model Scheme on Port State Measures to Combat Illegal, Unreported and Unregulated Fishing,

Bearing in mind that, in the exercise of their sovereignty over ports located in their territory, States may adopt more stringent measures, in accordance with international law,

Recalling the relevant provisions of the United Nations Convention on the Law of the Sea of 10 December 1982, hereinafter referred to as the 'Convention,'

Recalling the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks of 4 December 1995, the Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas of 24 November 1993 and the 1995 FAO Code of Conduct for Responsible Fisheries,

Recognizing the need to conclude an international agreement within the framework of FAO, under Article XIV of the FAO Constitution,

Have agreed as follows:

Part 1. General Provisions

Article 1. Use of terms

For the purposes of this Agreement:

(*a*) "conservation and management measures" means measures to conserve and manage living marine resources that are adopted and applied consistently with the relevant rules of international law including those reflected in the Convention;

(*b*) "fish" means all species of living marine resources, whether processed or not;

(*c*) "fishing" means searching for, attracting, locating, catching, taking or harvesting fish or any activity which can reasonably be expected to result in the attracting, locating, catching, taking or harvesting of fish;

(*d*) "fishing related activities" means any operation in support of, or in preparation for, fishing, including the landing, packaging, processing, transshipping or transporting of fish that have not been previously landed at a port, as well as the provisioning of personnel, fuel, gear and other supplies at sea;

(*e*) "illegal, unreported and unregulated fishing" refers to the activities set out in paragraph 3 of the 2001 FAO International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing, hereinafter referred to as 'IUU fishing';

(*f*) "Party" means a State or regional economic integration organization that has consented to be bound by this Agreement and for which this Agreement is in force;

(*g*) "port" includes offshore terminals and other installations for landing, transshipping, packaging, processing, refuelling or resupplying;

(*h*) "regional economic integration organization" means a regional economic integration organization to which its member States have transferred competence over matters covered by this Agreement, including the authority to make decisions binding on its member States in respect of those matters;

(*i*) "regional fisheries management organization" means an intergovernmental fisheries organization or arrangement, as appropriate, that has the competence to establish conservation and management measures; and

(*j*) "vessel" means any vessel, ship of another type or boat used for, equipped to be used for, or intended to be used for, fishing or fishing related activities.

Article 2. Objective

The objective of this Agreement is to prevent, deter and eliminate IUU fishing through the implementation of effective port State measures, and thereby to ensure the long-term conservation and sustainable use of living marine resources and marine ecosystems.

Article 3. Application

1. Each Party shall, in its capacity as a port State, apply this Agreement in respect of vessels not entitled to fly its flag that are seeking entry to its ports or are in one of its ports, except for:

(*a*) vessels of a neighbouring State that are engaged in artisanal fishing for subsistence, provided that the port State and the flag State cooperate to ensure that such vessels do not engage in IUU fishing or fishing related activities in support of such fishing; and

(*b*) container vessels that are not carrying fish or, if carrying fish, only fish that have been previously landed, provided that there are no clear grounds for suspecting that such vessels have engaged in fishing related activities in support of IUU fishing.

2. A Party may, in its capacity as a port State, decide not to apply this Agreement to vessels chartered by its nationals exclusively for fishing in areas under its national jurisdiction and operating under its authority therein. Such vessels shall be subject to measures

by the Party which are as effective as measures applied in relation to vessels entitled to fly its flag.

3. This Agreement shall apply to fishing conducted in marine areas that is illegal, unreported or unregulated, as defined in Article 1(e) of this Agreement, and to fishing related activities in support of such fishing.

4. This Agreement shall be applied in a fair, transparent and non-discriminatory manner, consistent with international law.

5. As this Agreement is global in scope and applies to all ports, the Parties shall encourage all other entities to apply measures consistent with its provisions. Those that may not otherwise become Parties to this Agreement may express their commitment to act consistently with its provisions.

Article 4. Relationship with international law and other international instruments

1. Nothing in this Agreement shall prejudice the rights, jurisdiction and duties of Parties under international law. In particular, nothing in this Agreement shall be construed to affect:

(*a*) the sovereignty of Parties over their internal, archipelagic and territorial waters or their sovereign rights over their continental shelf and in their exclusive economic zones;

(*b*) the exercise by Parties of their sovereignty over ports in their territory in accordance with international law, including their right to deny entry thereto as well as to adopt more stringent port State measures than those provided for in this Agreement, including such measures adopted pursuant to a decision of a regional fisheries management organization.

2. In applying this Agreement, a Party does not thereby become bound by measures or decisions of, or recognize, any regional fisheries management organization of which it is not a member.

3. In no case is a Party obliged under this Agreement to give effect to measures or decisions of a regional fisheries management organization if those measures or decisions have not been adopted in conformity with international law.

4. This Agreement shall be interpreted and applied in conformity with international law taking into account applicable international rules and standards, including those established through the International Maritime Organization, as well as other international instruments.

5. Parties shall fulfil in good faith the obligations assumed pursuant to this Agreement and shall exercise the rights recognized herein in a manner that would not constitute an abuse of right.

Article 5. Integration and coordination at the national level

Each Party shall, to the greatest extent possible:

(*a*) integrate or coordinate fisheries related port State measures with the broader system of port State controls;

(*b*) integrate port State measures with other measures to prevent, deter and eliminate IUU fishing and fishing related activities in support of such fishing, taking into account

as appropriate the 2001 FAO International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing; and

(*c*) take measures to exchange information among relevant national agencies and to coordinate the activities of such agencies in the implementation of this Agreement.

Article 6. Cooperation and exchange of information

1. In order to promote the effective implementation of this Agreement and with due regard to appropriate confidentiality requirements, Parties shall cooperate and exchange information with relevant States, FAO, other international organizations and regional fisheries management organizations, including on the measures adopted by such regional fisheries management organizations in relation to the objective of this Agreement.

2. Each Party shall, to the greatest extent possible, take measures in support of conservation and management measures adopted by other States and other relevant international organizations.

3. Parties shall cooperate, at the subregional, regional and global levels, in the effective implementation of this Agreement including, where appropriate, through FAO or regional fisheries management organizations and arrangements.

PART 2. ENTRY INTO PORT

Article 7. Designation of ports

1. Each Party shall designate and publicize the ports to which vessels may request entry pursuant to this Agreement. Each Party shall provide a list of its designated ports to FAO, which shall give it due publicity.

2. Each Party shall, to the greatest extent possible, ensure that every port designated and publicized in accordance with paragraph 1 of this Article has sufficient capacity to conduct inspections pursuant to this Agreement.

Article 8. Advance request for port entry

1. Each Party shall require, as a minimum standard, the information requested in Annex A to be provided before granting entry to a vessel to its port.

2. Each Party shall require the information referred to in paragraph 1 of this Article to be provided sufficiently in advance to allow adequate time for the port State to examine such information.

Article 9. Port entry, authorization or denial

1. After receiving the relevant information required pursuant to Article 8, as well as such other information as it may require to determine whether the vessel requesting entry into its port has engaged in IUU fishing or fishing related activities in support of such fishing, each Party shall decide whether to authorize or deny the entry of the vessel into its port and shall communicate this decision to the vessel or to its representative.

2. In the case of authorization of entry, the master of the vessel or the vessel's representative shall be required to present the authorization for entry to the competent authorities of the Party upon the vessel's arrival at port.

3. In the case of denial of entry, each Party shall communicate its decision taken pursuant to paragraph 1 of this Article to the flag State of the vessel and, as appropriate and to the extent possible, relevant coastal States, regional fisheries management organizations and other international organizations.

4. Without prejudice to paragraph 1 of this Article, when a Party has sufficient proof that a vessel seeking entry into its port has engaged in IUU fishing or fishing related activities in support of such fishing, in particular the inclusion of a vessel on a list of vessels having engaged in such fishing or fishing related activities adopted by a relevant regional fisheries management organization in accordance with the rules and procedures of such organization and in conformity with international law, the Party shall deny that vessel entry into its ports, taking into due account paragraphs 2 and 3 of Article 4.

5. Notwithstanding paragraphs 3 and 4 of this Article, a Party may allow entry into its ports of a vessel referred to in those paragraphs exclusively for the purpose of inspecting it and taking other appropriate actions in conformity with international law which are at least as effective as denial of port entry in preventing, deterring and eliminating IUU fishing and fishing related activities in support of such fishing.

6. Where a vessel referred to in paragraph 4 or 5 of this Article is in port for any reason, a Party shall deny such vessel the use of its ports for landing, transshipping, packaging, and processing of fish and for other port services including, *inter alia*, refuelling and resupplying, maintenance and drydocking. Paragraphs 2 and 3 of Article 11 apply *mutatis mutandis* in such cases. Denial of such use of ports shall be in conformity with international law.

Article 10. Force majeure *or distress*

Nothing in this Agreement affects the entry of vessels to port in accordance with international law for reasons of *force majeure* or distress, or prevents a port State from permitting entry into port to a vessel exclusively for the purpose of rendering assistance to persons, ships or aircraft in danger or distress.

Part 3. Use of Ports

Article 11. Use of ports

1. Where a vessel has entered one of its ports, a Party shall deny, pursuant to its laws and regulations and consistent with international law, including this Agreement, that vessel the use of the port for landing, transshipping, packaging and processing of fish that have not been previously landed and for other port services, including, *inter alia*, refuelling and resupplying, maintenance and drydocking, if:

(*a*) the Party finds that the vessel does not have a valid and applicable authorization to engage in fishing or fishing related activities required by its flag State;

(*b*) the Party finds that the vessel does not have a valid and applicable authorization to engage in fishing or fishing related activities required by a coastal State in respect of areas under the national jurisdiction of that State;

(*c*) the Party receives clear evidence that the fish on board was taken in contravention of applicable requirements of a coastal State in respect of areas under the national jurisdiction of that State;

(*d*) the flag State does not confirm within a reasonable period of time, on the request of the port State, that the fish on board was taken in accordance with applicable requirements of a relevant regional fisheries management organization taking into due account paragraphs 2 and 3 of Article 4; or

(*e*) the Party has reasonable grounds to believe that the vessel was otherwise engaged in IUU fishing or fishing related activities in support of such fishing, including in support of a vessel referred to in paragraph 4 of Article 9, unless the vessel can establish:

(i) that it was acting in a manner consistent with relevant conservation and management measures; or

(ii) in the case of provision of personnel, fuel, gear and other supplies at sea, that the vessel that was provisioned was not, at the time of provisioning, a vessel referred to in paragraph 4 of Article 9.

2. Notwithstanding paragraph 1 of this Article, a Party shall not deny a vessel referred to in that paragraph the use of port services:

(*a*) essential to the safety or health of the crew or the safety of the vessel, provided these needs are duly proven, or

(*b*) where appropriate, for the scrapping of the vessel.

3. Where a Party has denied the use of its port in accordance with this Article, it shall promptly notify the flag State and, as appropriate, relevant coastal States, regional fisheries management organizations and other relevant international organizations of its decision.

4. A Party shall withdraw its denial of the use of its port pursuant to paragraph 1 of this Article in respect of a vessel only if there is sufficient proof that the grounds on which use was denied were inadequate or erroneous or that such grounds no longer apply.

5. Where a Party has withdrawn its denial pursuant to paragraph 4 of this Article, it shall promptly notify those to whom a notification was issued pursuant to paragraph 3 of this Article.

Part 4. Inspections and Follow-up Actions

Article 12. Levels and priorities for inspection

1. Each Party shall inspect the number of vessels in its ports required to reach an annual level of inspections sufficient to achieve the objective of this Agreement.

2. Parties shall seek to agree on the minimum levels for inspection of vessels through, as appropriate, regional fisheries management organizations, FAO or otherwise.

3. In determining which vessels to inspect, a Party shall give priority to:

(*a*) vessels that have been denied entry or use of a port in accordance with this Agreement;

(*b*) requests from other relevant Parties, States or regional fisheries management organizations that particular vessels be inspected, particularly where such requests are supported by evidence of IUU fishing or fishing related activities in support of such fishing by the vessel in question; and

(*c*) other vessels for which there are clear grounds for suspecting that they have engaged in IUU fishing or fishing related activities in support of such fishing.

Article 13. Conduct of inspections

1. Each Party shall ensure that its inspectors carry out the functions set forth in Annex B as a minimum standard.

2. Each Party shall, in carrying out inspections in its ports:

(*a*) ensure that inspections are carried out by properly qualified inspectors authorized for that purpose, having regard in particular to Article 17;

(*b*) ensure that, prior to an inspection, inspectors are required to present to the master of the vessel an appropriate document identifying the inspectors as such;

(*c*) ensure that inspectors examine all relevant areas of the vessel, the fish on board, the nets and any other gear, equipment, and any document or record on board that is relevant to verifying compliance with relevant conservation and management measures;

(*d*) require the master of the vessel to give inspectors all necessary assistance and information, and to present relevant material and documents as may be required, or certified copies thereof;

(*e*) in case of appropriate arrangements with the flag State of the vessel, invite that State to participate in the inspection;

(*f*) make all possible efforts to avoid unduly delaying the vessel to minimize interference and inconvenience, including any unnecessary presence of inspectors on board, and to avoid action that would adversely affect the quality of the fish on board;

(*g*) make all possible efforts to facilitate communication with the master or senior crew members of the vessel, including where possible and where needed that the inspector is accompanied by an interpreter;

(*h*) ensure that inspections are conducted in a fair, transparent and non-discriminatory manner and would not constitute harassment of any vessel; and

(*i*) not interfere with the master's ability, in conformity with international law, to communicate with the authorities of the flag State.

Article 14. Results of inspections

Each Party shall, as a minimum standard, include the information set out in Annex C in the written report of the results of each inspection.

Article 15. Transmittal of inspection results

Each Party shall transmit the results of each inspection to the flag State of the inspected vessel and, as appropriate, to:

(*a*) relevant Parties and States, including:

(i) those States for which there is evidence through inspection that the vessel has engaged in IUU fishing or fishing related activities in support of such fishing within waters under their national jurisdiction; and

(ii) the State of which the vessel's master is a national;

(*b*) relevant regional fisheries management organizations; and

(*c*) FAO and other relevant international organizations.

Article 16. Electronic exchange of information

1. To facilitate implementation of this Agreement, each Party shall, where possible, establish a communication mechanism that allows for direct electronic exchange of information, with due regard to appropriate confidentiality requirements.

2. To the extent possible and with due regard to appropriate confidentiality requirements, Parties should cooperate to establish an information-sharing mechanism, preferably coordinated by FAO, in conjunction with other relevant multilateral and intergovernmental initiatives, and to facilitate the exchange of information with existing databases relevant to this Agreement.

3. Each Party shall designate an authority that shall act as a contact point for the exchange of information under this Agreement. Each Party shall notify the pertinent designation to FAO.

4. Each Party shall handle information to be transmitted through any mechanism established under paragraph 1 of this Article consistent with Annex D.

5. FAO shall request relevant regional fisheries management organizations to provide information concerning the measures or decisions they have adopted and implemented which relate to this Agreement for their integration, to the extent possible and taking due account of the appropriate confidentiality requirements, into the information-sharing mechanism referred to in paragraph 2 of this Article.

Article 17. Training of inspectors

Each Party shall ensure that its inspectors are properly trained taking into account the guidelines for the training of inspectors in Annex E. Parties shall seek to cooperate in this regard.

Article 18. Port State actions following inspection

1. Where, following an inspection, there are clear grounds for believing that a vessel has engaged in IUU fishing or fishing related activities in support of such fishing, the inspecting Party shall:

(*a*) promptly notify the flag State and, as appropriate, relevant coastal States, regional fisheries management organizations and other international organizations, and the State of which the vessel's master is a national of its findings; and

(*b*) deny the vessel the use of its port for landing, transshipping, packaging and processing of fish that have not been previously landed and for other port services, including, *inter alia*, refuelling and resupplying, maintenance and drydocking, if these actions have not already been taken in respect of the vessel, in a manner consistent with this Agreement, including Article 4.

2. Notwithstanding paragraph 1 of this Article, a Party shall not deny a vessel referred to in that paragraph the use of port services essential for the safety or health of the crew or the safety of the vessel.

3. Nothing in this Agreement prevents a Party from taking measures that are in conformity with international law in addition to those specified in paragraphs 1 and 2 of this Article, including such measures as the flag State of the vessel has expressly requested or to which it has consented.

Article 19. Information on recourse in the port State

1. A Party shall maintain the relevant information available to the public and provide such information, upon written request, to the owner, operator, master or representative of a vessel with regard to any recourse established in accordance with its national laws and regulations concerning port State measures taken by that Party pursuant to Articles 9, 11, 13 or 18, including information pertaining to the public services or judicial institutions available for this purpose, as well as information on whether there is any right to seek compensation in accordance with its national laws and regulations in the event of any loss or damage suffered as a consequence of any alleged unlawful action by the Party.

2. The Party shall inform the flag State, the owner, operator, master or representative, as appropriate, of the outcome of any such recourse. Where other Parties, States or international organizations have been informed of the prior decision pursuant to Articles 9, 11, 13 or 18, the Party shall inform them of any change in its decision.

Part 5. Role of Flag States

Article 20. Role of flag States

1. Each Party shall require the vessels entitled to fly its flag to cooperate with the port State in inspections carried out pursuant to this Agreement.

2. When a Party has clear grounds to believe that a vessel entitled to fly its flag has engaged in IUU fishing or fishing related activities in support of such fishing and is seeking entry to or is in the port of another State, it shall, as appropriate, request that State to inspect the vessel or to take other measures consistent with this Agreement.

3. Each Party shall encourage vessels entitled to fly its flag to land, transship, package and process fish, and use other port services, in ports of States that are acting in accordance with, or in a manner consistent with this Agreement. Parties are encouraged to develop, including through regional fisheries management organizations and FAO, fair, transparent and non-discriminatory procedures for identifying any State that may not be acting in accordance with, or in a manner consistent with, this Agreement.

4. Where, following port State inspection, a flag State Party receives an inspection report indicating that there are clear grounds to believe that a vessel entitled to fly its flag has engaged in IUU fishing or fishing related activities in support of such fishing, it shall immediately and fully investigate the matter and shall, upon sufficient evidence, take enforcement action without delay in accordance with its laws and regulations.

5. Each Party shall, in its capacity as a flag State, report to other Parties, relevant port States and, as appropriate, other relevant States, regional fisheries management organizations and FAO on actions it has taken in respect of vessels entitled to fly its flag that, as a result of port State measures taken pursuant to this Agreement, have been determined to have engaged in IUU fishing or fishing related activities in support of such fishing.

6. Each Party shall ensure that measures applied to vessels entitled to fly its flag are at least as effective in preventing, deterring, and eliminating IUU fishing and fishing related activities in support of such fishing as measures applied to vessels referred to in paragraph 1 of Article 3.

Part 6. Requirements of Developing States

Article 21. Requirements of developing States

1. Parties shall give full recognition to the special requirements of developing States Parties in relation to the implementation of port State measures consistent with this Agreement. To this end, Parties shall, either directly or through FAO, other specialized agencies of the United Nations or other appropriate international organizations and bodies, including regional fisheries management organizations, provide assistance to developing States Parties in order to, *inter alia*:

(*a*) enhance their ability, in particular the least-developed among them and small island developing States, to develop a legal basis and capacity for the implementation of effective port State measures;

(*b*) facilitate their participation in any international organizations that promote the effective development and implementation of port State measures; and

(*c*) facilitate technical assistance to strengthen the development and implementation of port State measures by them, in coordination with relevant international mechanisms.

2. Parties shall give due regard to the special requirements of developing port States Parties, in particular the least-developed among them and small island developing States, to ensure that a disproportionate burden resulting from the implementation of this Agreement is not transferred directly or indirectly to them. In cases where the transfer of a disproportionate burden has been demonstrated, Parties shall cooperate to facilitate the implementation by the relevant developing States Parties of specific obligations under this Agreement.

3. Parties shall, either directly or through FAO, assess the special requirements of developing States Parties concerning the implementation of this Agreement.

4. Parties shall cooperate to establish appropriate funding mechanisms to assist developing States in the implementation of this Agreement. These mechanisms shall, *inter alia*, be directed specifically towards:

(*a*) developing national and international port State measures;

(*b*) developing and enhancing capacity, including for monitoring, control and surveillance and for training at the national and regional levels of port managers, inspectors, and enforcement and legal personnel;

(*c*) monitoring, control, surveillance and compliance activities relevant to port State measures, including access to technology and equipment; and

(*d*) assisting developing States Parties with the costs involved in any proceedings for the settlement of disputes that result from actions they have taken pursuant to this Agreement.

5. Cooperation with and among developing States Parties for the purposes set out in this Article may include the provision of technical and financial assistance through bilateral, multilateral and regional channels, including South-South cooperation.

6. Parties shall establish an *ad hoc* working group to periodically report and make recommendations to the Parties on the establishment of funding mechanisms including a scheme for contributions, identification and mobilization of funds, the development of criteria and procedures to guide implementation, and progress in the implementation of the funding mechanisms. In addition to the considerations provided in this Article, the *ad hoc* working group shall take into account, *inter alia*:

(*a*) the assessment of the needs of developing States Parties, in particular the least-developed among them and small island developing States;

(*b*) the availability and timely disbursement of funds;

(*c*) transparency of decision-making and management processes concerning fund-raising and allocations; and

(*d*) accountability of the recipient developing States Parties in the agreed use of funds.

Parties shall take into account the reports and any recommendations of the *ad hoc* working group and take appropriate action.

Part 7. Dispute Settlement

Article 22. Peaceful settlement of disputes

1. Any Party may seek consultations with any other Party or Parties on any dispute with regard to the interpretation or application of the provisions of this Agreement with a view to reaching a mutually satisfactory solution as soon as possible.

2. In the event that the dispute is not resolved through these consultations within a reasonable period of time, the Parties in question shall consult among themselves as soon as possible with a view to having the dispute settled by negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement or other peaceful means of their own choice.

3. Any dispute of this character not so resolved shall, with the consent of all Parties to the dispute, be referred for settlement to the International Court of Justice, to the International Tribunal for the Law of the Sea or to arbitration. In the case of failure to reach agreement on referral to the International Court of Justice, to the International Tribunal for the Law of the Sea or to arbitration, the Parties shall continue to consult and cooperate with a view to reaching settlement of the dispute in accordance with the rules of international law relating to the conservation of living marine resources.

Part 8. Non-Parties

Article 23. Non-Parties to this Agreement

1. Parties shall encourage non-Parties to this Agreement to become Parties thereto and/or to adopt laws and regulations and implement measures consistent with its provisions.

2. Parties shall take fair, non-discriminatory and transparent measures consistent with this Agreement and other applicable international law to deter the activities of non-Parties which undermine the effective implementation of this Agreement.

Part 9. Monitoring, Review and Assessment

Article 24. Monitoring, review and assessment

1. Parties shall, within the framework of FAO and its relevant bodies, ensure the regular and systematic monitoring and review of the implementation of this Agreement as well as the assessment of progress made towards achieving its objective.

2. Four years after the entry into force of this Agreement, FAO shall convene a meeting of the Parties to review and assess the effectiveness of this Agreement in achieving its objective. The Parties shall decide on further such meetings as necessary.

Part 10. Final Provisions

Article 25. Signature

This Agreement shall be open for signature at FAO from the Twenty-second day of November 2009 until the Twenty-first day of November 2010 by all States and regional economic integration organizations.

Article 26. Ratification, acceptance or approval

1. This Agreement shall be subject to ratification, acceptance or approval by the signatories.

2. Instruments of ratification, acceptance or approval shall be deposited with the Depositary.

Article 27. Accession

1. After the period in which this Agreement is open for signature, it shall be open for accession by any State or regional economic integration organization.

2. Instruments of accession shall be deposited with the Depositary.

Article 28. Participation by regional economic integration organizations

1. In cases where a regional economic integration organization that is an international organization referred to in Annex IX, Article 1, of the Convention does not have competence over all the matters governed by this Agreement, Annex IX to the Convention shall apply *mutatis mutandis* to participation by such regional economic integration organization in this Agreement, except that the following provisions of that Annex shall not apply:

(*a*) Article 2, first sentence; and

(*b*) Article 3, paragraph 1.

2. In cases where a regional economic integration organization that is an international organization referred to in Annex IX, Article 1, of the Convention has competence

over all the matters governed by this Agreement, the following provisions shall apply to participation by the regional economic integration organization in this Agreement:

(*a*) at the time of signature or accession, such organization shall make a declaration stating:

(i) that it has competence over all the matters governed by this Agreement;

(ii) that, for this reason, its member States shall not become States Parties, except in respect of their territories for which the organization has no responsibility; and

(iii) that it accepts the rights and obligations of States under this Agreement;

(*b*) participation of such an organization shall in no case confer any rights under this Agreement on member States of the organization;

(*c*) in the event of a conflict between the obligations of such organization under this Agreement and its obligations under the Agreement establishing the organization or any acts relating to it, the obligations under this Agreement shall prevail.

Article 29. Entry into force

1. This Agreement shall enter into force thirty days after the date of deposit with the Depositary of the twenty-fifth instrument of ratification, acceptance, approval or accession in accordance with Article 26 or 27.

2. For each signatory which ratifies, accepts or approves this Agreement after its entry into force, this Agreement shall enter into force thirty days after the date of the deposit of its instrument of ratification, acceptance or approval.

3. For each State or regional economic integration organization which accedes to this Agreement after its entry into force, this Agreement shall enter into force thirty days after the date of the deposit of its instrument of accession.

4. For the purposes of this Article, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by its Member States.

Article 30. Reservations and exceptions

No reservations or exceptions may be made to this Agreement.

Article 31. Declarations and statements

Article 30 does not preclude a State or regional economic integration organization, when signing, ratifying, accepting, approving or acceding to this Agreement, from making a declaration or statement, however phrased or named, with a view to, *inter alia*, the harmonization of its laws and regulations with the provisions of this Agreement, provided that such declaration or statement does not purport to exclude or to modify the legal effect of the provisions of this Agreement in their application to that State or regional economic integration organization.

Article 32. Provisional application

1. This Agreement shall be applied provisionally by States or regional economic integration organizations which consent to its provisional application by so notifying the Depositary in writing. Such provisional application shall become effective from the date of receipt of the notification.

2. Provisional application by a State or regional economic integration organization shall terminate upon the entry into force of this Agreement for that State or regional economic integration organization or upon notification by that State or regional economic integration organization to the Depositary in writing of its intention to terminate provisional application.

Article 33. Amendments

1. Any Party may propose amendments to this Agreement after the expiry of a period of two years from the date of entry into force of this Agreement.

2. Any proposed amendment to this Agreement shall be transmitted by written communication to the Depositary along with a request for the convening of a meeting of the Parties to consider it. The Depositary shall circulate to all Parties such communication as well as all replies to the request received from Parties. Unless within six months from the date of circulation of the communication one half of the Parties object to the request, the Depositary shall convene a meeting of the Parties to consider the proposed amendment.

3. Subject to Article 34, any amendment to this Agreement shall only be adopted by consensus of the Parties present at the meeting at which it is proposed for adoption.

4. Subject to Article 34, any amendment adopted by the meeting of the Parties shall come into force among the Parties having ratified, accepted or approved it on the ninetieth day after the deposit of instruments of ratification, acceptance or approval by two-thirds of the Parties to this Agreement based on the number of Parties on the date of adoption of the amendment. Thereafter the amendment shall enter into force for any other Party on the ninetieth day after that Party deposits its instrument of ratification, acceptance or approval of the amendment.

5. For the purposes of this Article, an instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by its Member States.

Article 34. Annexes

1. The Annexes form an integral part of this Agreement and a reference to this Agreement shall constitute a reference to the Annexes.

2. An amendment to an Annex to this Agreement may be adopted by two-thirds of the Parties to this Agreement present at a meeting where the proposed amendment to the Annex is considered. Every effort shall however be made to reach agreement on any amendment to an Annex by way of consensus. An amendment to an Annex shall be incorporated in this Agreement and enter into force for those Parties that have expressed their acceptance from the date on which the Depositary receives notification of acceptance from one-third of the Parties to this Agreement, based on the number of Parties on the

date of adoption of the amendment. The amendment shall thereafter enter into force for each remaining Party upon receipt by the Depositary of its acceptance.

Article 35. Withdrawal

Any Party may withdraw from this Agreement at any time after the expiry of one year from the date upon which the Agreement entered into force with respect to that Party, by giving written notice of such withdrawal to the Depositary. Withdrawal shall become effective one year after receipt of the notice of withdrawal by the Depositary.

Article 36. The Depositary

The Director-General of FAO shall be the Depositary of this Agreement. The Depositary shall:

(*a*) transmit certified copies of this Agreement to each signatory and Party;

(*b*) register this Agreement, upon its entry into force, with the Secretariat of the United Nations in accordance with Article 102 of the Charter of the United Nations;

(*c*) promptly inform each signatory and Party to this Agreement of all:

(i) signatures and instruments of ratification, acceptance, approval and accession deposited under Articles 25, 26 and 27;

(ii) the date of entry into force of this Agreement in accordance with Article 29;

(iii) proposals for amendment to this Agreement and their adoption and entry into force in accordance with Article 33;

(iv) proposals for amendment to the Annexes and their adoption and entry into force in accordance with Article 34; and

(v) withdrawals from this Agreement in accordance with Article 35.

Article 37. Authentic texts

The Arabic, Chinese, English, French, Russian and Spanish texts of this Agreement are equally authentic.

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

Done in Rome on this Twenty-second day of November, 2009.

Chapter V

DECISIONS OF THE ADMINISTRATIVE TRIBUNALS OF THE UNITED NATIONS AND RELATED INTERGOVERNMENTAL ORGANIZATIONS[1]

A. Decisions of the United Nations Administrative Tribunal[2]

By resolution 61/261 of 4 April 2007, entitled "Administration of Justice at the United Nations", the General Assembly decided to establish a new, independent, transparent, professionalized, adequately resourced and decentralized system of administration of justice consistent with the relevant rules of international law and the principles of the rule of law and due process to ensure respect for the rights and obligations of staff members and the accountability of managers and staff members alike.

By resolution 62/228 of 22 December 2007, entitled "Administration of Justice at the United Nations", the General Assembly further decided to establish a two-tier formal system of administration of justice, comprising a first instance United Nations Dispute Tribunal and an appellate instance United Nations Appeals Tribunal. By resolution 63/253 of 24 December 2008, also entitled "Administration of Justice at the United Nations", the General Assembly decided that these new Tribunals shall be operational as of 1 July 2009. The Assembly further decided that the United Nations Administrative Tribunal shall cease

[1] In view of the large number of judgements which were rendered in 2009 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. 1434 to 1499 of the United Nations Administrative Tribunal, Judgments Nos. 2766 to 2861 of the Administrative Tribunal of the International Labour Organization, Decisions Nos. 389 to 426 of the World Bank Administrative Tribunal, and Judgment No. 2009–1 of the International Monetary Fund Administrative Tribunal, see, respectively, documents AT/DEC/1434 to AT/DEC/1499; *Judgements of the Administrative Tribunal of the International Labour Organization: 106th and 107th Sessions; World Bank Administrative Tribunal Reports, 2009; and International Monetary Fund Administrative Tribunal Reports, Judgement No. 2009–1.*

[2] The Administrative Tribunal of the United Nations was 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 extended to the United Nations Joint Staff Pension Fund (including cases from all specialized agencies that participate in the Fund and which had accepted the jurisdiction of the Tribunal in Pension Fund cases), the United Nations Programmes and Funds, such specialized agencies and related organizations that had accepted the competence of the Tribunal (the International Maritime Organization and the International Civil Aviation Organization), the staff of the Registries of the International Court of Justice, the International Tribunal for the Law of the Sea, and the staff of the International Seabed Authority. For more information about the United Nations Administrative Tribunal and the full texts of its judgements, see http://untreaty.un.org/UNAT/main_page.htm.

to accept new cases as of 1 July 2009, and that it would be abolished as of 31 December 2009. The United Nations Administrative Tribunal therefore ceased to operate at the end of the year 2009.

1. *Judgment No. 1476 (25 November 2009): Acevedo* et al. v. *The Secretary-General of the United Nations*[3]

Suspension of granting of permanent appointments—Conversion of contractual status for staff on fixed-term appointments to permanent appointments—Staff shall be appointed by the Secretary-General under regulations established by the General Assembly—Considerable latitude of discretion enjoyed by the Secretary-General in matters of appointment, promotion and conversions

The Applicants were staff members of the United Nations serving on fixed-term appointments, with an entry on duty date prior to 1995. Secretary-General's bulletin[4] ST/SGB/280, issued on 9 November 1995, informed all staff members of the Secretary-General's decision to suspend the granting of permanent and probationary appointments, effective 13 November 1995. On 9 September 2004, the Secretary-General submitted his definitive proposals on new contractual arrangements, including a number of transitional measures which would ensure the protection of acquired rights of staff in service when the amended rules and regulations would come into force. In its resolution 59/226 of 23 December 2004, the General Assembly took note of the Secretary-General's proposals, and decided to revert to the issue at its sixtieth session, in 2005.

Between 10 November 2003 and 9 March 2004, the Applicants submitted requests to the Secretary-General for review of the decision to "keep in force the freeze on the granting of permanent appointments". The Organization replied to all such requests that the issue was under review, and that the Secretary-General had approved a one-time review of all staff who may have met the requirements to be considered for conversion to a permanent appointment. Should the Applicants meet the criteria for such conversion, they would be considered appropriately by the Staff Management Coordination Committee (SMCC).

Following this reply, the Applicants filed separate appeals with the Joint Appeals Board (JAB). The Organization and the Applicants agreed on 16 June 2006 that the appeal be submitted directly to the Tribunal pursuant to article 7 (1) of its Statute. On 17 October 2006, the Applicants filed an application with the Tribunal.

In setting out the legal framework, the Tribunal noted that Article 101 (1) of the Charter of the United Nations provides that staff shall be appointed by the Secretary-General under regulations established by the General Assembly. Accordingly, staff regulation 4.5 (b) provides that the Secretary-General shall prescribe which staff members are eligible for permanent appointments. In 1982, the General Assembly decided in resolution 37/126 that staff members of fixed-term appointment upon completion of five years of continuing

---

[3] Goh Joon Seng, Second Vice-President; Jacqueline R. Scott and Brigitte Stern, Members.

[4] 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 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).

good service shall be given reasonable consideration for a career appointment; this decision was implemented as of 1 January 1993 in staff rule 104.12.

The Tribunal observed that it had long recognized the considerable latitude of discretion enjoyed by the Secretary-General in matters of appointment, promotion and conversions (see Judgments No. 362 *Williamson* (1986) and No. 958 *Draz* (2000)). The Tribunal noted that the General Assembly, by resolution 57/305 of 1 May 2003, had requested the Secretary-General to continue current contractual arrangements, which required maintaining the suspension on granting permanent appointments and maintaining *status quo* conferred by existing mandates. The Tribunal stated that the Secretary-General was thus entitled to refuse consideration of the Applicants for conversion of their contractual status, based on ST/SGB/280/Amend.1, and in light of all circumstances, including the subsequent General Assembly resolutions on the matter.

The Tribunal rejected the application in its entirety.

2. *Judgement No. 1490 (25 November 2009): Toh* v. *The Secretary-General of the United Nations*[5]

Failure by staff member to disclose financial information and to cooperate with investigation—Imposition of disciplinary measures constitutes a special exercise of quasi-judicial power by Secretary-General—Analysis by Tribunal of proper use of discretion by Secretary-General—Failure to disclose financial information and to cooperate with investigation constituting misconduct—Proportionality of Sanctions imposed—Allegations of discrimination and harassment to be addressed in an independent cause for redress

The Applicant served as Assistant Secretary-General of Central Support Services from July 2003 until the Secretary-General decided to place him on special leave with full pay on 16 January 2006 pursuant to staff rule 105.2, in connection with an ongoing audit and investigation of the procurement operations of the Organization. His status was converted to suspension with full pay on 22 December 2006, pursuant to staff rule 110.2.

The allegations against the Applicant concerned a failure in the management of the procurement process relating to the lease of at least two helicopters to the United Nations Transitional Authority in East Timor (UNTAET), his failure to disclose certain financial information in the 2004 and 2005 disclosure forms, and his failure to cooperate fully with the Procurement Task Force during the investigation.

The Applicant appealed to the Joint Disciplinary Committee (JDC), which issued its report on 4 October 2007. The JDC found that the Applicant could not be attributed the Organization's harm in relation to the procurement process of the helicopters. It concluded however that he had neglected to exercise due care in the filing of the 2004 and 2005 financial disclosure forms, and that his failure to cooperate with an officially authorized investigation constituted misconduct. The JDC recommended that the Applicant receive a supervisory reprimand for the former finding, and a written censure for the latter. By a letter of 15 October 2007 the Secretary-General informed the Applicant that he was to be demoted to the D-2 level without possibility of promotion, and be imposed a fine of two months' salary. On 2 January 2008, the Applicant filed an application with the Tribunal.

[5] Dayendra Sena Wijewarane, President; Jacqueline Scott and Brigitte Stern, Members.

The Tribunal noted that there was no dispute over the fact that the Applicant had failed to disclose certain assets in his financial disclosure forms, including a bank account in the United Kingdom, and real property in Singapore and in the United States. The Tribunal further noted that, in signing his financial disclosure forms, the Applicant had attested that the disclosures were true, complete and correct to the best of his knowledge, and had acknowledged that the failure to provide true, complete and correct information to the best of his knowledge and belief may have serious consequences, including the institution of disciplinary proceedings.

The Tribunal recognized that the imposition of disciplinary actions involves the exercise of discretion of the Secretary-General. Unlike other discretionary powers, such as with respect to promotion, or transferring or terminating employment, the imposition of disciplinary measures constitutes a "special exercise of quasi-judicial power". Thus, in such circumstances, the process of review by the Tribunal is of a particular nature; the Secretary-General's interest in maintaining high standards of conduct must be reconciled with the interest of staff in being assured that they are not penalized unfairly or arbitrarily (see Judgment No 941 *Kiwanuka* (1999)).

In matters of discipline, the Tribunal generally applies an eight factor analysis to determine whether the Secretary-General has properly exercised his discretion. The Tribunal examines: 1) whether the facts on which the disciplinary measures were based have been established; 2) whether the established facts legally amount to misconduct or serious misconduct; 3) whether there has been any substantive irregularity (e.g. omission of facts or consideration of irrelevant facts); 4) whether there has been any procedural irregularity; 5) whether there was an improper motive or abuse of purpose; 6) whether the sanction is legal; 7) whether the sanction imposed was disproportionate to the offence; and 8) whether there has been arbitrariness. This list is however not intended to be exhaustive (*ibid.*; see also Judgment No 898 *Uggla* (1998).

As to whether the Applicant's failure to accurately fill out his financial disclosure forms constituted misconduct or merely negligence, the Tribunal noted that the Applicant had been involved in the review of the system of financial disclose and therefore could not plead ignorance of the relevant rules. On the other hand, the Tribunal found that the forms were not well crafted and the way questions were posed changed from year to year, which, the Tribunal accepted, may have caused some confusion. The Tribunal accepted that the failure to disclose the bank accounts in 2004 may have been due to a misunderstanding, but found that for the year 2005, the Applicant knew or should have known that his bank accounts constituted assets that needed to be disclosed. The failure to disclose this information constituted misconduct. With regard to the Applicant's failure to disclose his personal residences, the Tribunal noted that in 2004 such disclosure was in fact not required. By 2005, however, the Applicant was required to disclose *all* real estate, which was made clear in the definition of assets in the disclosure form. The Tribunal was not convinced by the Applicant's argument that the omission of this information was an oversight, and concluded that it, also, constituted misconduct.

Turning to the alleged failure of the Applicant to cooperate with the investigation of the procurement process, the Tribunal noted that the Applicant conceded that the Secretary-General had the authority to request financial records from him, but contended that the Secretary-General had abused his authority and that the scope of the request was overly

broad. It was agreed that, while he had, after some time, produced some documentation, the Applicant had failed to provide the financial records relating to two substantial pieces of real estate. The Tribunal concluded that the Applicant had a duty pursuant to staff regulations 1.2 (n), (m), and (r), and staff rule 104.4 (e) to comply with the request of the Secretary-General, and his failure to do so constituted misconduct.

The Tribunal added that, in light of the systemic investigations into the misuse of funds, waste and abuse in the procurement process in the United Nations, a process in which the Applicant participated, including as a high-level manager, it was within the Secretary-General's purview to request and investigate the Applicant's financial records. There was no evidence that the requests for information were improperly made or that he was singled out with such requests. In the view of the Tribunal, based on the Applicant's senior role, and in light of the circumstances and the time period, the requests were not unreasonable.

Finally, the Tribunal did not agree with the contention made by the Applicant that he was not obliged to produce financial records for the years 1998, when he was not employed by the Secretariat, and 2006, when he was placed on special leave without pay. The Tribunal observed that the Applicant had indeed been a staff member of the United Nations in both 1998 and 2006, and as such subject to the Staff Regulations and Rules.

Turning to the question whether the sanctions imposed were disproportionate, the Tribunal recognized that the recommendations by the JDC, which had been more lenient than those imposed by the Secretary-General, were indeed just recommendations. Given that the Applicant had wilfully refused to disclose accurately his assets and to provide all the information requested, the Tribunal could not say that the measure imposed had been disproportionate or unwarranted.

Finally, the Tribunal stated that it was mindful of the Applicant's strong allegations of discrimination and harassment against him by his supervisor in the context of the investigation. However, it found that such allegations should be addressed in an independent cause for redress; and could not be used to dislodge the independent obligation to disclose financial information.

In view of the foregoing, the Tribunal rejected the application in its entirety.

3. *Judgement No. 1495 (25 November 2009): Annan* v. *United Nations Joint Staff Pension Board*[6]

Payment of pension benefits to former staff member elected as Secretary-General—Suspension of pension benefits during term of office as Secretary-General—Ambiguous meaning of the word "suspension" in this context—Principle that, in complex matters relating to pensions, the Administration must be especially careful and transparent—When possible or reasonable, it is assumed that the Pension Fund makes assumptions and decisions that are favourable to staff members—In view of ambiguity, interpretation must be made as having a lesser rather than a greater adverse affect on Applicant

[6] Bob Hepple, First Vice-President; Goh Joon Seng, Second Vice-President; and Brigitte Stern, Member.

The Applicant was a staff member of the United Nations for 30 years, until he retired on 31 December 1996, and took office as Secretary-General on 1 January 1997. The Applicant had during his service contributed to the United Nations Joint Staff Pension Fund (UNJSPF) from June 1966 to December 1996, with a break in service from 20 November 1974 to 19 November 1975. On 14 January 1997, the Secretary of the United Nations Joint Staff Pension Board (UNJSPB) addressed an unsigned "draft" letter to the Special Assistant to the Secretary-General emphasizing that due to concerns of "perceived inconsistency" and with "double-dipping", the best option would be for the Applicant to voluntarily suspend payment of his Pension Fund benefits during his term as Secretary-General. The Applicant maintains that this document was not sent to him or seen by him or his Special Assistant.

On 28 January 1997, the Applicant completed the UNJSPF payment of benefits form, in which he selected the option of a "one-third lump sum, or [USD] if less than one-third, OR your contributions with interest AND the balance as an early retirement benefit". In the payment instructions, he requested that payment of his periodic benefit be suspended during the period of his service as United Nations Secretary-General. The Secretary of the UNJSPB confirmed this choice on 3 February 1997. On 27 November 2001, the new CEO of the UNJSPF notified the Applicant that the suspension of the payment of benefits was made along the lines of article 40 (a) of the UNJSPF Regulations, and that as such, any benefits attributable to the time period he served as Secretary-General would not be payable.

On 27 June 2006, the Applicant wrote to the CEO of UNJSPF and informed him of the banking instructions where the Fund may transfer the accrued payments, as his tenure as Secretary-General would expire on 31 December that year. On 30 June, the CEO of the Fund informed the Applicant that only the cost-of-living increase applicable to his retirement benefits as of April 2006 would be payable. On 7 July, the Applicant informed the CEO that he disagreed with the interpretation of their 1997 arrangement, and requested that the Standing Committee review the matter. On 31 August 2007, the CEO of UNJSPF informed the Applicant that the Standing Committee had met on 11 July, and that it had concluded that the arrangement concluded had been appropriate and legally valid, and that the Applicant voluntarily had placed himself in the same situation as retired staff members who returned to service pursuant to article 40 of the Regulations of the Fund. On 25 April 2008, the Applicant filed an application with the Tribunal.

As to the receivability of the claim, the Tribunal took the view that the Applicant could not have requested a review until a formal decision on a request for payment of benefits had been made. The application was consequently not time-barred.

The Tribunal noted that the Applicant interpreted the term "suspend" in the sense of a determent of payment for the period he held office as Secretary-General; whereas the Respondent, on the other hand, argued that a suspension implied a waiver or forfeiture of periodical benefits. On the face of it, the Tribunal found that the words "that payment of my periodic benefit be suspended" were ambiguous, and were capable of being interpreted either way. It was accordingly necessary for the Tribunal to investigate the sense and meaning of the words used, on the basis of the evidence of all the relevant surrounding facts available to the Parties at the time the payment instruction was given by the Applicant, and accepted by UNJSPF. The Tribunal stated that it had to put itself in the factual matrix in which the Parties were at that time, and to determine what the words used in the payment

instruction would convey to a reasonable person against the background of the Applicant's election as Secretary-General. The Tribunal took the view that any subsequent action taken was not relevant, as this would imply that the payment instruction meant one thing when it was signed, and another thing at a later stage.

The Tribunal firstly noted that the fact that the Applicant, in his capacity as Secretary-General, was not considered a staff member of the United Nations supported the Applicant's interpretation. As Secretary-General, he did not contribute to the UNJSPF, and all his terms and conditions of service were set by the General Assembly. Secondly, the General Assembly and the Office of Human Resources Management did not seek to apply any measure aimed at "double dipping" such as a cap on his earning, as had previously been done for retirees employed as consultants by the Organization. Thirdly, article 40 (a) of the UNJSPF Regulations, concerning the effect of re-entry into participation by former staff members, clearly did not apply to the Applicant's case.

Against these considerations, the Tribunal noted, the Respondent made reference to a statement of 2 October 2008 by the former CEO of UNJSPF, by which he stated that he met with the Applicant's Special Assistant in January 1997, and expressed the view that "the concept of 'double-dipping' could not be circumvented by the simple device of choosing to delay the payment of UNJSPF pension". The Respondent further referred to an *aide mémoire* dated 9 January 1997, and a draft memorandum dated 14 January 1997, by which the Secretary-General was advised to avoid "double-dipping", by accepting a voluntary suspension of his payments, which would be parallel to article 40 (a) of the Fund's Regulations. The Applicant however denied ever having received the *aide memoire*, and contended that his Special Assistant was never authorized to discuss his personal pension entitlements. He further claimed that, while he was advised to consider avoiding the appearance of receiving an income from two sources while Secretary-General, he was never advised that he would be required to forfeit his pension benefits.

The Tribunal noted that the evidence in support of both versions was circumstantial, and that there had been no opportunity to cross examine witnesses in order to establish the truth. In any event, the alleged documents presented by the Respondent did not show that the Applicant had been informed that he would be expected to forego his benefits for his period in office as Secretary-General. They did not rule out the entirely credible possibility that the Applicant could avoid any appearance of conflict of interest by deferring payments until he left office.

In resolving this conflict of evidence, the Tribunal was guided by the well-established principle that, in complex matters relating to pensions, "the Administration must be especially careful" (Judgement No. 1185, *Van Leeuwen* (2004)) and transparent (Judgement No. 1091, *Droesse* (2003)). Moreover, the Tribunal assumed that whenever possible or reasonable, in its negotiations the Fund makes assumptions and decisions that are favourable to staff members (*ibid.*). In the present case, the Fund failed to act carefully and transparently in order to ensure that the consequences of the wording used by the Applicant in his payment instruction were made clear to him. In view of the ambiguity, the instruction must be construed as having lesser rather than a greater adverse effect on the Applicant's pension entitlements. Thus, not without hesitation, the Tribunal found that the Respondent had failed to establish on the balance of probabilities that the word "suspend" was used in the sense of a forfeiture of periodic benefits.

B. United Nations Dispute Tribunal

By resolution 61/261 of 4 April 2007, entitled "Administration of Justice at the United Nations", the General Assembly agreed that the new formal system of administration of justice should comprise two tiers, consisting of a first instance, the United Nations Dispute Tribunal, and an appellate instance, the United Nations Appeals Tribunal, rendering binding decisions and ordering appropriate remedies. It further decided that a decentralized United Nations Dispute Tribunal shall replace existing advisory bodies within the current system of administration of justice, including the joint appeals boards, joint disciplinary committees and other bodies as appropriate.

By resolution 62/228 of 22 December 2007, entitled "Administration of Justice at the United Nations", the General Assembly decided to establish a two-tier formal system of administration of justice, comprising a first instance United Nations Dispute Tribunal and an appellate instance United Nations Appeals Tribunal. It further decided that the United Nations Dispute Tribunal initially should be composed of three full-time judges, to be located in New York, Geneva and Nairobi, and two half-time judges.

By resolution 63/253 of 24 December 2008, entitled "Administration of Justice at the United Nations", the General Assembly adopted the statutes of the United Nations Dispute Tribunal and United Nations Appeals Tribunal. It also decided that the United Nations Dispute Tribunal and the United Nations Appeals Tribunal shall be operational as of 1 July 2009, and it abolished, as of the same date, the joint appeals boards, the joint disciplinary committees and the disciplinary committees of the separately administered funds and programmes.

The judgments summarized hereinafter therefore cover the period 1 July-31 December 2009.

1. *Judgment No. 003 (22 July 2009): Hepworth* v. *Secretary-General of the United Nations*[7]

Lawfulness of a decision not to extend a fixed-term appointment—Request for suspension of a contested administrative decision subject to management evaluation—Interpretation of the expression "prima facie" in article 2.2 of the UNDT Statute—Staff members serving under fixed term appointment do not have right to renewal unless there are countervailing circumstances—Countervailing circumstances include abuse of discretion in not extending an appointment or an express promise to extend appointment—Organization's exercise of its discretionary power must not be tainted by abuse of power—Decision of non-renewal not considered *in specie* a veiled disciplinary sanction

The Applicant joined the United Nations Environment Programme (UNEP) in 2000 as Deputy Director of the Division of Environmental Conventions (DEC) and also worked in parallel on wild life related issues for the Division of Environmental Policies Implementation (DEPI), at the D-1 level. In 2004, while stationed in Nairobi, the Applicant accepted a transfer to Bonn to be appointed as acting Executive Secretary with the Secretariat of the Convention on Migratory Species (CMS), which acceptance was the result of discussions with the then Executive Director of UNEP. During these discussions the Applicant and

[7] Judge Thomas Laker (Geneva).

the then Executive Director of UNEP held a meeting on 15 April 2004 of which confidential minutes were taken. These minutes expressed the wish of the then Executive Director (ED) to make the Applicant Officer-in-Charge (OIC) of CMS. They also said that "the ED will give 3 or 4 months as OIC (extendable until ED makes final selection for the post). During the time [the Applicant] can demonstrate his ability to handle the position (. . .) [The Applicant] said that he would give it a try and that he is happy that he will culminate his career in CMS". In 2005—as acting Executive Secretary—the Applicant applied for the post of Executive Secretary of CMS and was ultimately selected and recruited for the post. In 2007, UNEP renewed the Applicant's appointment as Executive Secretary of CMS for two years until 26 July 2009.

On 24 February 2009, the Executive Director of UNEP verbally offered the Applicant the position of Special Advisor on biodiversity within DEPI in Nairobi. On 26 February 2009, the Applicant responded to the Executive Director of UNEP declining the offer providing both professional and personal reasons. After having received verbal communication on 26 March 2009, the Applicant requested the Executive Director to reconsider the decision to reassign him to the position of Special Advisor on Biodiversity in Nairobi. In a memorandum dated 1 April 2009, the Applicant was informed by the Executive Director of UNEP of his decision to reassign him to the Special Advisor post in Nairobi. In an email dated 15 May 2009, the Applicant indicated that he was not prepared to accept the reassignment offer in Nairobi nor would he sign a new contract with UNEP in that capacity. On 5 June 2009, the Applicant submitted to the Secretary-General a request for review in relation to the decision to transfer him to Nairobi.

By letter dated 15 June 2009, the Executive Director of UNEP informed the Applicant that, in view of his decision not to transfer to Nairobi as instructed, UNEP was not in a position to extend his current contract beyond its expiration on 26 July 2009. On 15 July 2009 the Applicant submitted a request for management evaluation of the decision not to extend his fixed-term appointment beyond its 26 July 2009 expiration date.

On 15 July 2009, the Applicant requested the Tribunal to suspend the decision dated 15 June 2009 not to renew his appointment beyond the date of expiration, during the pendency of the management evaluation.

According to article 2.2 of the Tribunal's Statute, adopted by General Assembly resolution 63/253 of 24 December 2008, the "Tribunal shall be competent to hear and pass judgment on an application filed by an individual requesting the Dispute Tribunal to suspend, during the pendency of the Management Evaluation, the implementation of a contested administrative decision that is the subject of an ongoing management evaluation where the decision appears prima facie to be unlawful, in cases of particular urgency, and where its implementation would cause irreparable damage." In this regard, the Tribunal explained that the expression "*prima facie*" as such can have at least two meanings, which may lead to different results: it seems arguable that 'at first sight' means that the unlawfulness of the decision is that clear and far beyond every doubt that it can be discovered already at first sight. On the other hand—with accentuation of the word first—it implies that one can have second thoughts about it upon closer inspection which can lead to a different result from the first sight. The Tribunal noted that, since the suspension of action is only an interim measure and not the final decision of a case, it may be more appropriate to assume that *prima facie* in this respect does not require more than serious and reasonable

doubts about the lawfulness of the contested decision. This understanding could also rely on the fact that article 2.2 of the UNDT Statute only requires that the contested decision "appears" *prima facie* to be unlawful. The Tribunal reasoned that following this interpretation, which clearly is in favor of any request for suspension of action, the Organization's decision not to renew the Applicant's appointment did not appear *prima facie* to be unlawful. It did therefore not need to consider the other prerequisites for suspension of action, namely that the case be of particular urgency, and whether its implementation would cause irreparable damage.

The Tribunal then turned to staff regulation 4.5 (c) according to which "a temporary appointment for a fixed term shall expire automatically and without prior notice on the expiration date specified in the letter of appointment". Staff members who, like the Applicant, are serving under a fixed term appointment do not have a right to renewal, unless there are countervailing circumstances. According to the United Nations Administrative Tribunal's jurisprudence, countervailing circumstances may include abuse of discretion in not extending an appointment, or an express promise by the Organization that gives the staff member an expectancy that his or her appointment will be extended. Further, the Organization's exercise of its discretionary power in not extending a fixed term contract must not be tainted by forms of abuse of power, such as violation of the principle of good faith in dealing with staff, prejudice or arbitrariness, or other extraneous factors that may flaw its decision (see Judgment No. 885, *Handelsman* (1998)).

In applying these criteria, the Tribunal rejected the Applicant's claim that he had a reasonable expectancy of renewal. In this regard, the Applicant had only had relied on the minutes of the meeting held on 15 April 2004, according to which no express promise of the Organization could be deduced.

Finally, the Tribunal rebuked the argument of the Applicant that the decision of non-renewal was an improper exercise of discretion, finding that there was no evidence that this decision constituted a veiled disciplinary sanction for the Applicant's non-compliance with respect to his transfer to Nairobi. The Tribunal further found no evidence supporting the Applicant's claim that the decision of non-renewal was in fact an abuse of authority and a retaliatory measure against him for raising politically sensitive issues with the German Government. The Tribunal held that the Organization was not bound to give any justification for not extending the fixed-term appointment, and that no right to renewal had been created, even if the transfer to Nairobi, as claimed by the Applicant, had been unlawful.

For these reasons, the Tribunal rejected the request by the Applicant.

2. *Judgment No. 2009/022 (23 September 2009): Kasyanov* v. *Secretary-General of the United Nations*[8]

Consideration by internal candidates eligible for lateral move 15 days after vacancy announcement—Administrative instruction ST/AI/2006/3 provides for two classes of candidates (15-day candidates and 30-day candidates)—Selection process in two stages, the second of which will only arise upon the non-identification of a suitable candidate during the first—Maxim *generalia specialibus non derogant*—

[8] Judge Michael Adams (New York).

PRESENT CASE DISTINGUISHED FROM JUDGEMENT NO. 310 (1983) OF THE UNITED NATIONS ADMINISTRATIVE TRIBUNAL

On 4 January 2008 the Applicant submitted his application for a vacant post as an interpreter at the P-4 level, advertised on 31 December 2007. His application met the criteria for eligibility for a lateral move under section 5.4 of administrative instruction[9] ST/AI/2006/3, and was qualified for consideration after 15 days after the date on which the post had been advertised.

The suitability of the Applicant for the vacant post was not assessed until the applications of candidates eligible for consideration after 30 days had also been received. The pool of applicants considered for appointment contained another 15-day candidate, who had however applied only after 30 days, and a number of 30-day candidates. Five candidates (including the Applicant and the other candidate eligible for consideration after 15 days), were considered for the position, and finally one of the 30-day candidates was selected.

The Applicant claimed that, because he was a 15-day mark candidate who was assessed as suitable for appointment, the other candidates should not have been considered, and he should have been selected for appointment.

The Tribunal first considered the context of the relevant provisions applicable in the case. In administrative instruction ST/AI/2006/3, paragraph 2.2 provides, *inter alia*, that the system of staff selection "requires that vacancies be made available in the first instance for lateral moves of eligible staff before other candidates may be considered for selection". The nature of the priority given to eligible staff is stated in section 7.1 of the same administrative instruction: an eligible and suitable staff member is to be moved into a vacancy before other candidates may even be considered. Together with the eligibility requirements provided for in section 5, these provisions underline the key importance of the notion of lateral movement: it is not a merely desirable aspect of staff management but is a critical element of a complex and carefully elaborated system of selection and deployment of the human resources available to the Organization.

Sections 5.4 and 5.5 in the same administrative instruction deal respectively with eligibility for lateral moves at what is called the 15-day mark and the 30-day mark by specifying particular attributes that vary according to the level of the position being sought, the office in which the Applicant is serving and in which office the position is placed and, importantly, the Applicant's field mission history. Internal candidates and Field Service Officers who have been on mission detail for specified periods are made eligible to be considered at the 15-day mark in order to recognize and encourage mission service. The Tribunal in this respect observed that it was obvious that any significant watering down of the advantage of being a 15-day candidate would have an adverse, potentially considerable, impact on this important policy objective and that recognition and encouragement would vary unpredictably. The Tribunal rejected the assertion made by the Organization that the word "shall" in section 4.5 of the administrative instruction was to be interpreted as "may". Although the Tribunal observed that such interpretation has on rare occasions been made,

[9] Administrative instructions describe instructions and procedures for the implementation of the Financial Regulations, 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).

the phrase "shall normally" in the immediately preceding sentence, spoke against such an interpretation in the present case.

As to the submission by the Organization that management resources did not, or usually did not, or sometimes did not, permit compliance with the time limit, the Tribunal was, in contrast, of the understanding that the inclusion of the 30-day candidates in the pool of internal candidates had rather been a deliberate decision by the management, arising from the management's interpretation of the administrative instruction and the application of the Guidelines rather than being the result of an inability to consider the 15-day candidates separately.

Moving to section 7.1 of the administrative instruction which requires first priority to be given "to lateral moves of candidates eligible to be considered at the 15-day mark", the Tribunal clarified that section 7.1 is concerned with 15-day candidates as part of a particular *class* of lateral moves, rather than what is to happen at a specific *date*. This section clearly and unambiguously requires a selection process in two stages, the second stage of which would only arise at the non-identification of a suitable candidate at the first stage.

In this regard, the Tribunal rejected the Organization's argument that the provision should be interpreted in the light of the general language of the Charter of the United Nations or the Staff Regulations, since such an interpretation, in the absence of transparent rules capable of yielding predictable, rational and understandable results, would have outcomes that could justifiably be seen as arbitrary, capricious, inconsistent and unpredictable. The Tribunal also rejected the argument that section 7.1 was inconsistent with the Charter and the Staff Regulations. It pointed out that the maxim *generalia specialibus non derogant* (the general does not qualify the particular) applied, and where an administrative instruction is clear, unambiguous and unqualified, it would only be in the clearest case that it would be held to have a different meaning because of words of general policy drawn from another, albeit superior instrument.

The Tribunal rebuked the Organization's argument relying on Judgement No. 310 (*Estabial*, 10 June 1983) of the United Nations Administrative Tribunal. In the said judgment, the Secretary-General had decided that only candidates from francophone African countries would be considered for a vacancy, and this condition was part of the advertised requirements for selection. The Administrative Tribunal, in that case, held that the Secretary-General was prohibited by Article 101, paragraph 3, of the Charter and staff regulation 4.2 from establishing a limitation to francophone African nationals. The Dispute Tribunal distinguished from Judgement No. 310 and explained that, whereas the former case related to an *ad hoc* decision by the Secretary-General which was deemed inconsistent with the Charter and the Staff Regulations, the latter case concerned the proper interpretation of the relevant administrative instruction. Moreover, the Dispute Tribunal stated that, in view of the Organization's policy of promoting diversity in appointments, Judgment No. 310 had been wrongly decided.

The Tribunal finally rejected the Organization's argument that the evaluation and selection guidelines contained in annex IV of administrative instruction ST/AI/2006/3 could be used to interpret the administrative instruction in case the former are inconsistent with the latter. However, mere fact that the guidelines appear to assume a different procedure than that laid down in the administrative instruction would not be sufficient to provide for an interpretation that directly contradicts the language of the provisions of

the administrative instruction, particularly given that the guidelines are subordinate to the administrative instruction.

In conclusion, the Tribunal held that the clear and binding meaning of section 7.1 of ST/AI/2006/3 is that, if it has not been possible to evaluate the 15-day candidates by the 30-day mark, they should be placed in a separate pool and evaluated before the 30-day candidates. If a suitable 15-day candidate is identified at that stage, then it is unnecessary to consider the applications of the 30-day candidates. Therefore, in the present case, the Applicant was not considered in accordance with ST/AI/2006/3, as was his legal right. The parties were directed to provide written submissions as to the appropriate relief that should be ordered.

3. *Judgment No. 2009/027 (30 September 2009): Sina* v. *Secretary-General of the United Nations,* Judgment on application for a summary judgment[10]

Application for summary judgement under article 9 of the Rules of Procedure—Evidence capable of establishing likelihood of connection between allegations against investigation conclusions critical of the Applicant and decision to not renew contract

The Applicant was employed by the Kabul office of the United Nations Development Programme (UNDP) on a 300 series appointment of limited duration, which was due to expire on 28 February 2007. He was a munitions expert whose job involved him in the programme for disbanding and disarming what was then called the "northern militias", and worked at a munitions storage facility in Kabul.

The Applicant lived in a single room in a guesthouse in Kabul. On 12 October 2006, an explosion occurred in his room. He was seriously injured and required hospitalisation and extensive medical care. An investigation immediately proceeded, involving members of the Afghan police and also, it appears, a number of persons employed by the UNDP, whose precise role is unclear.

In due course, it was established, beyond question, that the source of the explosion was a mortar round which, in all likelihood, had only partially exploded. A first report was made by the Special Investigation Unit of the Department of Safety and Security on 26 October 2006, and was handed over to the UNDP Office of Audit and Performance Review (OAPR) for further action. In substance, the report implicated an employee, who was the Applicant's co-worker, of the UNDP in the explosion. The second investigation was primarily designed to ascertain the actual circumstances of the incident of 12 October 2006. The investigators were critical of the initial investigation at the scene and detailed a number of respects in which the forensic examination departed from elementary appropriate practice. However, given the chaotic circumstances, nothing in the report suggested that the United Nations officers had acted carelessly or unprofessionally.

The investigation suggested that the suspicion against the Applicant's co-worker was wrongly directed, and that the Applicant himself may in fact have been implicated, though the precise manner in which it occurred could not be ascertained, partly because of shortcomings in the initial forensic examination of the scene. Nevertheless, the investigation

[10] Judge Michael Adams (New York).

found, the forensic evidence available justified, at the least, the reasonable suspicion that it was the Applicant who was responsible one way or another for the explosion.

On 21 December 2006, the then Programme Director for UNDP Kabul informed the applicant that, in accordance with the usual practice on notification, his contract was due to expire on 28 February 2007, and that it would not be renewed. As it happened, various extensions were later given to the Applicant, arising from his medical condition and his sick leave entitlements.

The Applicant contended that the decision not to renew his contract was affected by the adverse opinions of the investigators, whose opinions were embodied in the report dated January 2007. The Respondent applied under article 9 of the Rules of Procedure of the Tribunal for a summary judgement.

The Tribunal found that it seemed reasonably possible, at least, that the Programme Director had, by the time of the decision not to renew his contract, been made aware of the investigators' conclusions that were critical of the Applicant. The evidence was therefore, contrary to the submission of the Respondent, capable of establishing a likelihood of a connection between the investigation's conclusions on the one hand and the Applicant's failure to obtain a renewal of his contract on the other. Whether the evidence ultimately would justify such a conclusion would be a matter for trial, but the Tribunal was not convinced that this was a case where the application for summary dismissal would be justified. It was explained that there were various other aspects of the Applicant's case which until then had not been adequately articulated and that these, as pointed out by the Respondent, included substantial legal obstacles which the Applicant would need to overcome before he could succeed. These circumstances did not change the conclusion in the case at hand, and the Tribunal therefore dismissed the motion for summary judgment.

4. Judgment No. 2009/030 (7 October 2009): Hastings v. *Secretary-General of the United Nations*[11]

Ineligibility of applicants for positions more than one level higher than personal grade—To establish the meaning and intention of a United Nations provision, the relevant context is the hierarchy of United Nations internal legislation—Staff rule 112.2 allows for exceptions to Staff Rules—Exceptions may similarly be made to administrative instructions, which are subordinate legislation—Applicant's request for an exception to be made not properly considered

The Applicant was a staff member of the United Nations since 1978 and was working in the Advisory Committee on Administrative and Budgetary Questions (ACABQ) Secretariat since 1999. In 2000 she was promoted to the P-5 level as Senior Administrative Management Officer. In July 2006 the Applicant applied for the vacant position of Executive Secretary, a post at the D-2 level. At that time administrative instruction[12] ST/AI/2002/4 was in force, which did not impose eligibility restrictions on staff members applying for a position two levels above their own. The Applicant participated in a competency-based interview but was not selected for the position.

[11] Judge Coral Shaw (New York).

[12] For information on administrative instructions, see note under section 2 above.

On 1 January 2007, Administrative Instruction ST/AI/2006/3 came into force replacing ST/AI/2002/4. Section 5.2 of ST/AI/2006/3 provides that staff members shall not be eligible to be considered for a position more than one level higher than their personal grade.

On 1 September 2008, the then Executive Secretary separated from employment pursuant to an agreed termination, and the Applicant was named acting Executive Secretary and was granted a special post allowance (SPA) to the D-1 level, while remaining employed at the P-5 level.

On 13 January 2009, the vacant D-2 post of Executive Secretary was announced. A month later, the Applicant wrote to the Secretary-General requesting that an exception be made to section 5.2 of ST/AI/2006/3 to enable her to apply for the D-2 post. In this letter she set out the reasons why she should be considered for the position, including her long experience and increasing responsibility in the ACABQ Secretariat, that she had been receiving an SPA at the D-1 level since September 2008, as well as her performance and achievements as acting Executive Secretary. She also recalled Article 101, paragraph 3, of the Charter which provides that the paramount consideration in the employment of the staff shall be the necessity of securing the highest standards of efficiency, competence and integrity as well as gender balance.

On 16 March 2009 the Staffing Service, at the Strategic Planning and Staffing Division of the Office of Human Resource Management replied, denying her request. This reply was subsequently confirmed by the Assistant Secretary-General for Human Resource Management (ASG), upon an enquiry by the Applicant. The Applicant sought administrative review, by which the original decision was upheld. She then appealed to the Joint Appeals Board (JAB). On 1 July 2009 the case was transferred from the JAB to the Dispute Tribunal.

The Tribunal observed that the first issue in the case was whether section 5.2 of ST/AI/2006/3 allows for exceptions to the rule that persons applying more than one level higher than their personal grade not are eligible for consideration. The Tribunal explained that the meaning of any legislative provision is ascertained by the meaning of its words in the light of the intention of the rules as a whole, and that this intention is generally ascertained by reference to the context of the provision in the rules. Where the wording of an instruction suggests that no exception is permitted, the question of whether a provision is mandatory or directory has historically been another aid to interpretation. To establish the meaning and intention of a United Nations provision, the relevant context is the hierarchy of United Nations internal legislation. This is headed by the Charter of the United Nations, followed by resolutions of the General Assembly, Staff Regulation and Rules, Secretary-General bulletins, and finally administrative instructions. In this regard, the Tribunal noted a number of relevant provisions, including Article 101, paragraph 3, of the Charter, providing that "the paramount consideration in the employment of the staff and the determination of the conditions of service shall be the necessity of securing the highest standards of efficiency, competence and integrity.", and staff rule 112.2, which provides:

> Exceptions to the staff rules may be made by the Secretary-General, provided that such exception is not inconsistent with any staff regulation or other decision of the General Assembly and provided further that it is agreed to by the staff member directly affected and is, in the opinion the Secretary-General, not prejudicial to the interests of any other staff member or group of staff members.

Given the hierarchy of United Nations legislation, the Tribunal concluded that it cannot be the case that exceptions may be made to staff rules but not to administrative instructions which are essentially subordinate legislation. Administrative instructions must therefore be subject to staff rule 112.2 (b) in the same way that staff rules are. The Tribunal found it is conceivable that in certain circumstances an exception would have to be made to meet Article 101, paragraph 3, of the Charter, for example, where an otherwise ideal candidate with the highest standards of efficiency, competency and integrity does not meet the prerequisites for the position, rule 112.2 (b) could be invoked for the paramount considerations to prevail in order to enable an exception to be made to the otherwise strict rule.

The second issue of the case was whether the decision of the ASG not to allow an exception was lawful. In the view of the Tribunal, in order for the decision to be lawful, the ASG must have turned her mind to the possibility of an exception being made, the criteria for such an exception, and considered whether the Applicant's situation amounted to such an exception. In view of the wording in the correspondence between the Applicant and the Respondent, leading up to the ASG's formal reply, the Tribunal found that the approach of the Respondent had been that section 5.2 of the relevant administrative instruction did not allow for any exceptions.

Apart from the valid submission by the Respondent that any exceptions should be very limited, the Tribunal observed that there was nothing to indicate what guidelines (if any) the ASG used to evaluate the Applicant's eligibility to be considered for an exception. There was certainly a basis for such a consideration to be made, given that she had had the necessary qualifications to be selected for an interview in 2006, prior to the change to the administrative instructions. For these reasons, the Tribunal found that it was more likely than not that the Applicant's case for an exception had not been properly considered and, accordingly, the decision to reject her application had not been lawful.

5. Judgment No. 2009/034 (13 October 2009): Shashaa v. *Secretary-General of the United Nations*[13]

Preconditions in article IX of Staff Regulations and chapter XI in Staff Rules must be present to terminate permanent contract with the Organization—Good faith efforts must be made by the Organization to find alternative posts for permanent staff members whose posts are abolished—Staff member's right to three months' notice upon termination of contract—Obligation of the Organization to identify alternative posts within the Organization—Reasonable cooperation can be expected from staff member but onus is on Organization to protect permanent staff member—Universal obligation of both employee and employer to act in good faith towards each other includes acting rationally, fairly, honestly and in accordance with the obligations of due process

The Applicant entered the service of the United Nations Development Programme (UNDP) in Jordan in 1978 as a locally recruited general service staff member. In 1985, he was granted a 100 series permanent appointment. In 1999, at the request of UNDP office in Iraq, he was assigned to a temporary two-year 200 series post as an L-4 level finance officer with the UNDP Electricity Network Rehabilitation Programme (ENRP) in northern Iraq.

[13] Judge Coral Shaw (New York).

His local post in Jordan was protected by a lien for two years. However, two years later, when asked by UNDP, the Applicant agreed to stay in northern Iraq, and consequently forfeited the lien on his post in Jordan. He remained in northern Iraq for the next eight years.

In 2004, the Applicant's contract with ENRP came to an end. In a letter dated 9 March 2004 from the Office of Human Resources (OHR) he was advised of some matters concerning the ending of his contract which were relevant to his later separation from service and his present claim. Following that letter, the Applicant was assigned to another 200 series appointment in Iraq with UNDP with an expiry date of 30 April 2007.

On 7 April 2007 the Applicant was advised he would be separated from service on 30 April 2007. In taking this step, UNDP did not recognise the permanent nature of his initial appointment in Jordan, but treated him as though his only appointment with UNDP had been the temporary 200 series appointment which had expired on 30 April 2007. He consequently only received termination payments in accord with separation from his temporary appointment.

The Applicant requested administrative review of the decision to separate him from service. Following this review, UNDP acknowledged that an error had been made and decided to compensate the Applicant for termination entitlements due to him also from the 100 series appointment. The Applicant appealed the decision to separate him from service.

The Tribunal observed that the Staff Rules and Regulations significantly limit the circumstances under which a permanent contract with the Organization may be terminated before the mandatory retirement age, as such employment is subject to particular safeguards. The protections enjoyed by permanent staff have been discussed in a number of judgments of the United Nations Administrative Tribunal, including in *Fagan* (1994) and *Carson* (1962), which established that good faith efforts must be made by the Organization to find alternative posts for permanent staff members whose posts are abolished, in order to avoid to the greatest extent possible a situation in which permanent staff members with a significant record of service with the Organization are dismissed and forced to undergo belated and uncertain professional relocation. In such cases, the Organization must show that the staff member was considered for available posts and was not found suitable for any of them before termination.

In the case at hand, the March 2004 letter to the Applicant was cited by the Respondent as evidence of UNDP's policy concerning the responsibility of staff members in the Applicant's situation to identify suitable alternative placements. The Tribunal however found that the policy was not in accord with the Staff Rules. For example, it overlooked the positive requirement of clause (i) of staff rule 109.1(c) which requires the employer to retain staff members with permanent appointments in preference to all other types of appointments; and the requirement in clause (ii) which requires that local staff be given consideration for suitable posts available at their duty stations. Although the employer can expect reasonable cooperation from a staff member, the onus is on the employer to protect the permanent staff member, and the responsibility for searching out and finding a position should not rest with the staff member as suggested by UNDP in the March 2004 letter.

The Tribunal observed that there was no evidence or even suggestion that UNDP had any reason to terminate the Applicant's service for reasons of performance or because he was not deemed suitable for service in any part of the United Nations system. Rather, he was initially deemed to be separated from service solely because of the abolition of the

200 series post. He was given three months' notice of the end of the temporary appointment but no proper notice of an intention to separate him entirely from service with the Organization by terminating his 100 series appointment. The Tribunal further noted that before deciding to separate him entirely from service, UNDP had to consider whether any of the preconditions of article IX of the Staff Regulations and chapter IX of the Staff Rules for termination of a permanent appointment had been met. This was a breach of the required process.

Further, if any of the preconditions of staff regulation 9.1 had been met, staff rule 109.3 obliged UNDP to give the Applicant three months' notice of the intended separation. The Tribunal emphasized that such notice is not a mere formality. Although payment in lieu may be given, such payment is a secondary option. Three months' notice would have given both parties the opportunity to take reasonable steps to ascertain if there were any suitable positions available for the Applicant to be employed as a permanent staff member elsewhere in the Organization.

Finally, had UNDP had no alternative other than to terminate the Applicant's permanent appointment, he had a possibility to take special leave without pay pursuant to staff rule 109.4 (d), which, in the absence of evidence to the contrary, in the Tribunal's view had been available in 2007. This would at least have enabled the Applicant to continue making contributions to the Pension Fund, and take advantage of other staff benefits, albeit at his own expense.

As to the question whether UNDP had acted in breach of its obligations of good faith and fair dealing, the Tribunal referred to its findings in *James* (2009), in which it held that the universal obligation of both employee and employer to act in good faith towards each other includes acting rationally, fairly, honestly and in accordance with the obligations of due process. The Tribunal noted that, although UNDP had not acted in accordance with its obligations towards the Applicant, this was due to its misunderstanding of his employment status rather than because of a dishonest and unfair process. As soon as the error was brought to its attention, UNDP acted in good faith to rectify the situation in a manner which it may have believed was adequate, but which the Tribunal found inadequate.

Turning to the question of remedies, the Tribunal considered that, although the consequence of the present judgment was that the Applicant would be entitled to remedies, these could not be properly assessed without more evidence and submissions. It explained that one matter which needed clarification was whether the opportunity for special leave without pay was an option available to the Applicant at the time he was separated. Another matter was whether and to what extent UNDP had already compensated the Applicant for any loss arising from its failure to recognize his permanent status.

In conclusion, the parties were to advise the Tribunal within 30 days of the date of the judgment whether (a) the parties had reached an agreement on the remedies to be provided to the Applicant, (b) the parties wished to pursue mediation on the issue of remedies, or (c) a further hearing and decision by the Tribunal to determine appropriate remedies would be required.

6. *Judgment No. 2009/036 (16 October 2009): Morsy v. Secretary-General of the United Nations*[14]

Request for extension of time limit for filing complaint with Tribunal (article 8.3 of the UNDT Statute)—Difference in the texts of the relevant provisions of the Statutes of the United Nations Administrative Tribunal and of the UNDT—A legislative body is presumed to be aware of the state of the law when enacting a statute—When two acts are *in pari materia* it can be inferred that a provision should bear the judicial interpretation previously placed on it—The expression "exceptional cases" in the UNDT Statute has a wider definition than the expression "exeptional circumstances" in the Statute of the Administrative Tribunal—"Exceptional" to be interpreted as out of the ordinary, unusual, special or uncommon, and shall be determined in each case on its own merits—Individual may by his own action or inaction forfeit his right to be heard by failing to comply with time limits—Applicant was diligent, but was caught in the unusual circumstance of a transition between two systems—Finding that there was an exceptional case in the present instance

The Applicant received an administrative decision dated 27 March 2009 from the Secretary-General between 30 March and 9 April 2009. On 3 June 2009, the Applicant sent a letter to the United Nations Administrative Tribunal (UNAT) requesting a 90-day extension to submit his appeal of the said decision, and the Tribunal granted an extension until 30 June 2000. It also stated that after 30 June, cases could be filed with the United Nations Dispute Tribunal (UNDT), and that information on the location of the Registry of the UNDT would be made available in due course. On 10 June 2009, the Applicant emailed the Administrative Tribunal requesting "that the case be transferred to the new Tribunal, or please provide me with the details to effect such transfer". On or around 24 July 2009, the Applicant received a letter from the UNAT dated 14 July 2009 advising him to submit his application to the UNDT and providing the new Tribunal's contact information. By email dated 4 August 2009, the Applicant requested advice on the new procedure to appeal the decision with the Dispute Tribunal. By email dated 7 August 2009, the Applicant submitted the same request, and submitted also the same application form he had submitted to UNAT on 3 June 2009, requesting an extra 90 days to file his case for reasons of "changing [his] counsel and relocating overseas". On 16 August 2009, the Applicant, then unrepresented, made application for an extension of time until 8 October 2009 to lodge his application with the United Nations Dispute Tribunal.

After a comparison between the old and new rules, regulations and Statutes concerning the extension of time limitations, the Tribunal observed that article 7.4 of the Statute of UNAT clearly articulated that an application shall not be receivable unless filed within the time limits. The Statute of the UNDT does not contain the same mandatory prohibitive words "shall not be receivable" as the Statute of UNAT. There is consequently no express prescriptive bar or prohibition relating to the 90, 30, or 45 day period; it is confined only to a three-year limitation period. Whilst UNAT applied the test of "exceptional circumstances" in the old process for request for extension of time limits, UNDT may suspend or waive the deadlines "only in exceptional cases". The Tribunal observed that the current provisions are not inflexible. Although article 8.4 of the Statute of UNDT is prohibitive or

[14] Judge Memooda Ebrahim-Carstens (New York).

prescriptive in nature, articles 8.1 and 8.3 grant the Tribunal discretion to waive or suspend deadlines in exceptional cases.

Under the new Rules of Procedure UNDT is granted a general power to shorten or extend the time for compliance with time limits fixed by the Rules of Procedure, or to "waive any rule when the interests of justice so require". This general power to shorten or extend the time for compliance covers the deadlines set out in article 7.1 of the Rules of Procedure. The time limits in that article are identical to those in article 8.1 of the Statute.

As to the meaning of the relevant provisions of the new Statute, as compared to the earlier one, the Tribunal noted that a legislating body is presumed to be aware of the state of the law at the time of the enactment of a statute. Thus, when a particular provision has received a judicial interpretation and the legislature has re-enacted it or included it in a statute in *pari materia*, the courts can validly infer that the legislature intends the provision to bear the judicial interpretation previously placed on it. However, the two acts must be in *pari materia*; they must be identical and deal with the same subject matter, and not merely give effect to the same policy.

The Tribunal pointed out that the old and new Statutes were not in *pari materia*. The General Assembly, presumed to have been aware of the state of the law at the time of the enactment of the Statute, in not re-enacting or adopting the old provisions, evinced, in the opinion of the Tribunal, a clear and manifest intention that the old test based on UNAT's definition of "exceptional circumstances" would not be applicable.

Further the Tribunal stated that an "exceptional case" has a much wider definition and cannot be equated with the old definition of "exceptional circumstances". An exceptional case may include a case which raises a matter of important legal precedent which requires to be decided on the general applicability of a particular provision or policy, irrespective of personal or extraneous circumstances preventing the applicant from filing timeously. A case may also be exceptional because it falls in the transitional period between the old and the new dispensation, and is delayed by a genuine confusion over the applicable procedures. According to the Tribunal, the clear and manifest intention was that the old test was not to be applicable. Therefore, the Tribunal found that it should not be bound by the previous wording and the strict definition of "exceptional circumstances" in interpreting "exceptional reasons" and "exceptional cases". It was furthermore explained that "exceptional" simply means something out of the ordinary, quite unusual, special, or uncommon. To be exceptional, a circumstance or reason need not be unique or unprecedented or very rare, but it cannot be one which is regular or routinely or normally encountered. What constitutes exceptional must be decided in each case on its own merits.

The Tribunal further noted that a subjective construction by which the test is reliant on the Applicant's own perception of "exceptional reasons" would, of course, lead to an absurdity, as each applicant would deem his reasons to be exceptional. It follows that the Tribunal must have the discretion, to be exercised judiciously, upon a consideration of all the relevant facts in each particular case, to establish whether the Applicant's case is out of the ordinary, special, uncommon, or unusual. Whether an Applicant sets out exceptional "reasons" or "circumstances" is a matter of mere semantics, so long as the Tribunal finds his case to be exceptional as something out of the ordinary.

Moreover, the Tribunal observed that time limits exist for reasons of certainty and expeditious disposal of disputes in the workplace. An individual may by his own action or

inaction forfeit his right to be heard by failing to comply with time limits, for the maxim *vigilantibus et non dormientibus legis subveniunt* (the law aids those who are vigilant and not those who are asleep) would surely apply.

In this case, the Applicant had already received an extension of the time limit until 30 June 2009, granted by UNAT. The delay in filing this matter with UNDT on 16 August, having received information at the end of July, was not inordinate. The reasons provided by the Applicant, that he changed counsel and was relocating, were not, in the opinion of the Tribunal, entirely persuasive as exceptional when viewed alone. However, the Applicant was diligent and did not simply sit back nor abandon his rights at any time. His default was not willful or due to gross negligence on his part, and there was no evidence of bad faith.

The Tribunal noted that time limits are not supposed to trap an applicant who acts in good faith. In the case at hand, it appeared clear that through no fault of his own, the Applicant was caught in the unusual circumstance of a transition into the new internal justice system, when procedures were unclear or still in progress and timeous guidance was unavailable to him. This does not mean that any case from the transition period would be considered as sufficiently exceptional. However, in consideration of the totality of the Applicant's particular situation, the Tribunal was satisfied that this was an exceptional case with exceptional reasons justifying an extension of time.

For these reasons, the Tribunal decided that the Applicant was granted an extension of time to file his application with the Registry of the Dispute Tribunal on or before 16 November 2009.

7. Judgment No. 2009/054 (26 October 2009): Nwuke v. *Secretary-General of the United Nations, Judgment on receivability*[15]

Application of suspension of action of a disputed administrative decision—Interim relief cannot be ordered in cases of appointment, promotion or termination—Disputed decision not deemed *prima facie* unlawful

The Applicant claimed that he was invited for an interview for the post of Director of the Trade, Finance and Economic Development Division (TFED) of the United Nations Economic Commission for Africa (UNECA) on 12 June 2009. On 13 June 2009, the Applicant wrote to the Human Resources Services Section of UNECA and informed them that since in the past UNECA had appointed candidates from the roster, he should be treated in the same manner as those other rostered candidates. On the same date, according to the Applicant, he wrote to the Office of Human Resources Management (OHRM) to request for an authoritative interpretation of the provisions of Administrative Instruction[16] ST/AI/2006/3 entitled Staff Selection System, but he never received a response.

On 24 June 2009, the Applicant wrote to the Secretary-General of the United Nations to complain of discriminatory treatment and abuse of due process in promotions at UNECA. The Applicant alleged that he had been the subject of discrimination at UNECA for a considerable period of time because he had refused an offer of the Executive Secretary of UNECA of an L-6 post in the latter's Office where he "would be writing for him." The

[15] Judge Vinod Boolell (Nairobi).

[16] For information on administrative instructions, see note under section 2 above.

Applicant alleged that this discrimination was again demonstrated in the process of filling the vacant post of Director, TFED.

In a letter dated 3 August 2009, the Management Evaluation Unit (MEU) directed that the Applicant should submit to a competency-based interview for the post of Director, TFED, UNECA. The MEU also advised that, on the basis of the management evaluation, the Secretary-General had concluded that the decision to request the Applicant to undergo a competency-based interview was appropriate in his case. He further concluded that in order to avoid even the appearance of a conflict of interest, UNECA should reconfigure the composition of the Advisory Selection Panel (ASP) constituted to interview him.

On 8 September 2009, the Applicant filed an application with the Nairobi United Nations Dispute Tribunal (UNDT), in which he requested, *inter alia*, the UNDT to compel the Organization to investigate his complaints against UNECA senior management, notably, the Executive Secretary, of abuse of due process and discrimination in appointments, and to restrain the Executive Secretary and/or any of his agents from cancelling the vacancy announcement for the post of Director, TFED, until this matter was either fully resolved or fully adjudicated by the UNDT.

On 5 October 2009, the Executive Secretary, UNECA, announced his decision to fill the post of Director, TFED.

The Tribunal observed that article 13.1 of the Rules of Procedure read together with article 2.2 of the Statute of the Tribunal clearly state that an application may be filed for suspension of action of a disputed administrative decision that is the subject of an ongoing management evaluation. Staff rule 111.2 requires a staff member to first request a review of the contested decision. The Tribunal stated that these provisions must be interpreted in such a way as to give effect to the underlying philosophy embodied in them, which according to the Tribunal is to allow management the opportunity to rectify an erroneous, arbitrary or unfair decision, as well as to provide a staff member the opportunity to request a suspension of the impugned decision pending an evaluation by management. The Tribunal found that the provisions cannot be interpreted to mean that the management evaluation is optional. At the same time, article 14.1 of the Rules, read together with article 10.2 of the Statute of the Tribunal, puts a limit on the power of the Tribunal to order an interim relief to suspend the implementation of an administrative action even if all the other requirements are met. Such interim relief cannot be ordered in cases of appointment, promotion or termination.

The Tribunal pointed out that the underlying philosophy behind the express exception in rule 14.1 is to avoid any paralysis of the work of the Organization and any hampering of its activities. Given the principles and purposes of the Organization as set out in Article 1 of the Charter, it would indeed be inadvisable to issue suspension orders in relation to appointments or promotions when these measures have been implemented for the good running of the Organization. That exception however does not debar an applicant from seeking relief through alternative procedures.

Turning to the case at hand, the Tribunal did not find any unlawfulness in the decision of the Organization not to appoint the Applicant to the position of Director, TFED, UNECA. It was explained that the Applicant had himself to blame as he declined to submit to an interview as requested. He could not, therefore, invoke his own omissions to pray for an equitable remedy.

The position to which the Applicant was laying claim was related to an appointment, as was the administrative decision dated 5 October 2009, of the Executive Secretary, UNECA, to fill the vacancy. This could not be the subject of an interim relief in view of the exception contained in article 14 of the Rules.

The Tribunal for these reasons concluded that the decision was not *prima facie* unlawful. The application was therefore not receivable under articles 13 and 14 of the Rules.

8. *Judgment No. 2009/075 (13 November 2009): Castelli* v. *Secretary-General of the United Nations*[17]

Claim for relocation expenses—Break-in-service designed to evade compensation due to staff members with continuous service exceeding 12 months—Relocation grant due upon appointment or assignment for one year or longer does not necessarily apply upon continuous service for one year—Employment continued in substance despite formal break-in-service—Advice of central review bodies not required for appointment which would have the effect of conferring continuous service of one year or more by virtue of accumulation—When accepting an offer of employment a staff member must be able to assume that offer is duly authorized—Acknowledgement accepting appointment subject to conditions laid down in Staff Rules and Regulations cannot be regarded as making the acceptance conditional in any material way—Employment can only be terminated in specific circumstances under relevant staff rules

The Applicant was employed in New York with the United Nations Mission in Nepal (UNMIN) for a period commencing on 4 April and ending on 31 December 2007. The contract was limited to service with UNMIN, and its extension was subject to the extension of the mandate of UNMIN and the availability of funding. On 4 January 2008 he entered into a further contract of employment effective from 1 January 2008 until 30 June 2008. This contract specified that the appointment was limited to service with the United Nations Observer Mission in Georgia (UNOMIG). The parties appeared to agree however that this was a mistake, and the Applicant remained at his UNMIN post in New York, performing the same functions as before. On 25 February 2008, the Applicant was informed that he was required to take a break in service from 4 March 2008, with a "reappointment" from 7 March to 30 June 2008. The Applicant declined to undertake this break in service, aimed at excluding him from the additional entitlements due to staff members after twelve months of service, and continued to work as before. The Organization claimed, nevertheless, that he was not employed in the same position under his second contract and that he was not employed by the Organization during the days specified as the break-in-service. When the Applicant later sought to obtain his entitlements, the Organization refused to pay. Claiming that the second contract was invalidly entered into, since appointments for one year or more were required to be reviewed by the central review bodies (CRBs), the Organization attempted to terminate his employment.

On 28 March 2008 the Applicant accepted an offer for another job and accordingly resigned from his position on 7 April 2008.

[17] Judge Michael Adams (New York).

The Applicant contested the Organization's decision not to pay him certain emoluments related to travel, assignment and relocation expenses. The Applicant's entitlement to the payments depended largely upon whether he had served a continuous period of employment for one year or more, but also upon whether his non-compliance with certain formal requirements could be waived as provided in the Department of Peacekeeping Operations' Human Resources Handbook.

The Tribunal observed that the claim made by the Applicant for relocation expenses depended on the interpretation of section 11 of administrative instruction[18] ST/AI/2006/5 of 24 November 2006, which provides for the payment of a relocation grant on "appointment or assignment for one year or longer". It pointed out that it was not altogether certain that the term "appointment" was the same as "employment". However, since this was the practice at the time the contract was entered into, it was an implicitly agreed that the Applicant would be accorded the entitlement of a staff member who had been employed continuously for a year. Indeed, it was conceded from the very beginning by the Organization that, if the Applicant's service were continuous, he would be entitled to the relocation grant; this was the reason explicitly given for requiring the Applicant to take the break in service.

The Tribunal observed that the break-in-service appeared to be merely a device designed to evade the compensation required to be paid to a staff member who serves for an uninterrupted period of a year or more: it served no managerial or organizational purpose. Since, in these circumstances, it was part of the agreement that the staff member would be reemployed after the break-in-service, although there was in form a termination of one contract and the commencement of another, in substance the employment continued. This situation was, in the view of the Tribunal, indistinguishable from leave without pay. It was explained that the mere fact that there were two contracts did not change the fact that the employment continued for a year or more. The Tribunal further observed that the fact that United Nations could procure the agreement of staff members to an artificial arrangement by which they forgo significant entitlements was a reflection of the overwhelming bargaining power of the United Nations as an employer.

In arguing that the second contract was invalid, the Organization had relied on the terms of rule 104.14 of Secretary-General's bulletin[19] ST/SGB/2003/1. This rule required that the CRBs advise the Secretary-General on all appointments of one year or longer. The Tribunal found that the term "appointment", as used throughout the Rules, is not cumulative but singular; moreover, the distinction between appointment on the one hand, and continuous service on the other, was embodied in the Rules. It was therefore not, the Tribunal concluded, intended to oblige a CRB to advise on an appointment which would have the effect of conferring continuous service of one year or more by virtue of accumulation.

The Tribunal additionally noted that, even if the second contract would have been one on which the CRBs should normally have advised, an exception to rule 104.14 (h) applied for staff members "recruited specifically for service with a mission". Albeit that the Applicant was stationed in New York, it was accepted that he was recruited to UNMIN. The Tribunal did not accept the argument put forth by the Organization that his employment with UNMIN had ended with the first contract. Although it may well be that the funding

[18] For information on administrative instructions, see note under section 2 above.

[19] For information on Secretary-General's bulletins, see note under section 1 of chapter V A, above.

arrangements had changed, the Tribunal did not accept the Organization could unilaterally vary the character of the contract of employment.

Further in this regard, the Tribunal did not agree that the failure of the CRBs to advise on the Applicant's second contract would have rendered the contract invalid. In the view of the Tribunal, the Applicant, when offered an employment, should be able to assume that the person who made the offer was authorized do so. As both the offer and the acceptance were unconditional, in accordance with the principles of contract law, a valid and fully enforceable contract was thus concluded.

As to the argument put forth by the Organization that the Applicant, as a finance officer, should have known about the unpredictable financing arrangements of the Organization, the Tribunal observed that this demonstrated an approach to employment contracts destructive of transparency, inconsistent with the requirements of good faith, and productive of uncertainty.

The Tribunal turned to the legal significance of an acknowledgement which the Applicant had been required to sign upon his appointment, which read:

> I hereby accept the appointment described in this letter, subject to the conditions therein specified and to those laid down in the Staff Regulations and in the Staff Rules governing temporary appointments for a fixed term. I have been acquainted with these Regulations and Rules, a copy of which has been transmitted to me with this letter of appointment.

The Tribunal found that this condition, which was too vague to be given legal significance, could not it be regarded as making the acceptance of the contract conditional in any material way.

Finally, as to the termination of the Applicant's contract, the Tribunal observed that the relevant staff rules (ST/SGB/2002/1) provided for termination in specific circumstances (see article IX), none of which applied in the present situation. As to the contention by the Organization that, as the second contract was invalid, it had a legal right to terminate the Applicant's employment on 4 March 2008, the Tribunal observed that, even if it had this right (which, for the reasons already stated, was not the case), it had not in fact exercised it. The Applicant declined to comply with the Organization's "requirement" to take a break in service, and the Organization did nothing stop the Applicant from working during that period, and was consequently estopped from contending the contrary.

The Tribunal thus concluded that, in respect of the relocation grant, the application was upheld.

9. Judgment No. 2009/091 (17 December 2009): Coulibaly v. *Secretary-General of the United Nations*[20]

Dismissal for serious misconduct—United Nations staff members must uphold highest standards of integrity—Applicant provided false information in application form, certified its truthfulness, and submitted forged transcript to support statements, in violation of the United Nations Charter and Staff Regulations—*Nemo auditur propriam turpitudinem allegans*—Disciplinary measure of dismissal not ill-founded, disproportionate or partial

[20] Judge Vinod Boolell (Nairobi).

The Applicant joined the United Nations High Commissioner for Refugees (UNHCR) Representation Office in Abidjan on 5 February 2001 as a Finance Clerk, at a G-4 level. Between January 2003 and the end of 2006, his contract was extended several times on the basis of fixed-term appointments, following which the Applicant was promoted to the post of Administrative Assistant at a G-6 level. On 1 January 2007, his fixed-term contract was extended for an additional year.

At the time of his initial appointment, the Applicant indicated in his application form P.11 under "Education", *inter alia*, a higher technician's certificate, Brevet Technicien Supérieur (BTS), from the Pigier school in Abidjan, Côte d'Ivoire. The same information was indicated in his *curriculum vitae* submitted as part of his application for the post of Administrative Assistant in June 2002.

On 4 September 2006, the Applicant passed the United Nations Finance Examination, and subsequently submitted to the Division of Human Resources Management the same information regarding his educational background. On 11 September 2006, the Division of Human Resources Management sent the Applicant a standard e-mail informing him that his name would automatically be included in the international professional roster, and that he would be considered for professional posts corresponding to his profile and experience. In order to identify a post commensurate with the applicant's qualifications and experience, the Division asked the Applicant to provide copies of his qualifications and diplomas, as well as a new P.11 form. The following day, the Applicant submitted a number of documents, including a transcript from the Pigier school in Abidjan, indicating that he had attended classes there from 2 October 1995 to 15 May 1998.

In accordance with United Nations practice, the Division of Human Resources Management at UNHCR wrote to the Pigier school in Abidjan on 8 November 2006 to obtain confirmation of the authenticity of the documents submitted by the Applicant. On 4 December 2006, the Director of Studies of the Pigier school informed the Division that the school had no record of a student by the Applicant's name for the period in question, and that the transcript provided by the Applicant was a forgery. The Division of Human Resources Management informed the Applicant of this response, and invited him to comment. The Applicant replied on 18 December 2006 that he was "shocked", and that he would visit the school himself. In a letter of 22 December 2006, the Applicant wrote to explain that the transcript he had provided had originally been drawn up to enable him to register as an outside candidate for the BTS examination in accounting. He stated that he had not been aware that the school had not kept a copy of the transcript. He also mentioned that he had received computer science training (internship in computer studies) at the same institution in 1991 and attached a receipt and a certificate. He added that he had had no doubts as to the authenticity of the documents provided at the time of his appointment and had had no intention of cheating.

Having received this information, the Division asked the Representation Office in Abidjan to conduct an investigation, and to that end, the Deputy Representative of UNHCR in Abidjan met the Director of Studies of the Pigier school on 23 January 2007. He obtained a confirmation that the subject codes used in the transcript provided by the applicant did not match the codes normally used by the Pigier school.

On 13 July 2007, the Office of the Inspector General contacted the Applicant by phone. In response to the inspectors' questions, the Applicant explained that he needed

proof of enrolment in order to take the Ivorian BTS training in accounting in June 1999. According to the Applicant, he obtained the disputed transcript at that time in exchange for CFAF 200,000 (approximately USD 460.09) from an unnamed individual at the Pigier school. During the hearing, the Applicant stated that this is an established practice. Later, the Applicant realized that he had studied the French, not the Ivorian, tax system. Consequently, the Applicant returned to the Pigier school in 2006 and learned that the transcript had been forged and that the person who had given it to him had been dismissed. The Applicant asserted that he had not taken the examination because the Ivorian tax system curriculum is different from that which he had studied at the National Institute of Higher Technical Education (INSET) in France, not because of the transcript issue. During the hearing, the Applicant also stated that he had never obtained a BTS and that he had never attended classes at the Pigier school. He had acquired the transcript in order to obtain an equivalent rating of his qualifications in his country of origin, on the basis of a course in accounting taken in France and of his transcript from the INSET.

By memorandum of 13 November 2007, the Head of the Legal Affairs Section informed the Director of the Division of Human Resources Management that the Applicant had committed an act of serious misconduct and recommended summary dismissal. The recommendation was approved by the Division management and the Applicant was informed of his summary dismissal on 8 December 2007.

In an appeal to the New York Joint Appeals Board, submitted on 29 January 2008, registered on 13 February 2008, and transferred to the United Nations Dispute Tribunal on 1 July 2009, the Applicant contested his dismissal for serious misconduct without notice or compensation.

At a hearing on 15 December 2009, Mr. Nicaise Zocli, Director of Studies at the Pigier school since 1984 provided testimony by which he contested, *inter alia*, the letterhead of the transcript, which he claimed was a forgery; the signature, which he said was not his own; the night classes, which he claimed did not exist during the years of study covered by the transcript; and the Applicant's enrolment in the school between 1995 and 1998.

The Tribunal considered that the decisive issue in the dispute was whether the circumstances of the submission of the forged transcript justified the Applicant's summary dismissal. In this regard, the question was whether the Applicant, upon his appointment, intentionally provided false information in the P.11 form and later submitted a forged transcript to support that information. The Applicant had clearly indicated that he had attained a BTS level of studies through a three year programme at the Pigier school. The Tribunal observed that the contents of the transcript could be interpreted to mean that he had regularly attended classes at that institution and had received grades sufficient to validate his level of study. However, the Applicant stated that he never studied at the Pigier school.

The Tribunal was not convinced by the submission by the Applicant that he had not realized that his transcript had been forged until 2006. It observed that staff members must uphold the highest standards of integrity, which is one of the core values of the United Nations. Despite being aware of the fraud, the Applicant provided false information in his P.11 form, certified the truthfulness of his statements by signing the form, and submitted a forged transcript to support his statements. The Tribunal stated that, only by acting, by contacting the Human Resources Management to modify his form, could the Applicant have demonstrated integrity. The Tribunal thus found that the Applicant could not make a

plea founded on an illegal act (*nemo auditur propriam turpitudinem allegans*), and stated that making false statements clearly is in violation of the provisions of the Charter of the United Nations and the Staff Regulations.

The Tribunal concluded, in light of the foregoing, and without the need to establish whether the forged transcript was decisive in the appointment of the Applicant, or whether he himself had committed the forgery, that UNHCR took a disciplinary measure that was not ill-founded, disproportionate or partial. It noted that the P.11 form clearly indicates that any misrepresentation or false documentation renders a staff member liable to termination or dismissal. The appeal by the Applicant was thus rejected.

10. Judgment No. 2009/097 (31 December 2009): Lewis v. *Secretary-General of the United Nations, Order on suspension of action*[21]

Application for suspension of action pending management evaluation—Decision to not review contract *prima facie* unlawful—Prerequisite of urgency satisfied—Mere economic loss can never be considered irreparable harm—Loss of employment for performance reasons is more than an economic act with more than economic consequences, and can constitute irreparable harm

The Applicant was employed as a local officer on a twelve-month fixed-term contract at the United Nations Children Fund (UNICEF) in Jamaica. Her contract was due to expire on 31 December 2009. On 30 November 2009, the Applicant was informed in writing by the Representative of UNICEF Jamaica (the Representative) that her contract would not be renewed after its expiration on 31 December 2009.

On 29 December 2009, the Applicant filed a request for management evaluation and an application for a suspension of action on what she alleged to be the decision not to renew her contract. The management evaluation was not completed at the time of the present proceedings; it was expected that it would take about one month.

The Applicant contended that the decision to not renew her contract was based on alleged performance inadequacies. This information about the Applicant's performance allegedly came from the Deputy Representative of UNICEF Jamaica (the Deputy Representative), who was the Applicant's immediate supervisor and who the Applicant claimed had developed against her feelings of ill will which led to the Representative being misled about the Applicant's performance. The matter said to give rise to the perceived ill will was a complaint made by the Applicant that the Deputy Representative had not given her sufficient financial allowance for the purpose of attending a conference in Panama, an issue which the Applicant raised with the staff association on her return from the training. The Applicant said that, following this report, the Deputy Representative ceased talking to her, which was a marked change from her previous "open office" approach.

The Applicant also relied on a performance evaluation report (PER) which was completed on 17 December 2009 after she was informed about the non-renewal of her contract. Unlike her two previous evaluations, this was critical and, although overall she was assessed as having "met most expectations with room for improvement", the comments of the Deputy Representative could only be read as being very critical of the Applicant's performance in a number of important respects.

[21] Judge Coral Shaw (New York).

The Tribunal observed that it was not in a position to assess whether the Deputy Representative's assessment of the Applicant's performance was fair. Certainly, the language in which it had been expressed, if the Applicant's evidence was to be accepted, did not reflect objectivity.

Turning to the prerequisites for suspension of action, the Tribunal reasoned that on balance the Applicant had a reasonably arguable case, and that the prerequisite of *prima facie* unlawfulness therefore was satisfied.

As to the prerequisite of urgency, the Tribunal stated that this prerequisite was plainly satisfied as the contract expired the very same day as the present judgment. Counsel for the Respondent did not seek to argue otherwise.

As to the requirement of irreparable harm caused if the application was not granted, the Tribunal noted that this prerequisite was of greater difficulty. It noted that it seemed clear that mere economic loss never can be irreparable as, if the Applicant succeeded in the substantive action, compensation would be payable. On the face of it, there was nothing in the case which provided a basis for concluding that the Applicant's loss was other than economic. At the same time, the Tribunal noted that the loss of employment for performance reasons was more than a purely economic act with more than purely economic consequences, and could constitute irreparable harm for the purpose of articles 13 and 14 of the Tribunal's Rules of Procedure, as had been mentioned in several other suspension of action cases. While the Tribunal expressed some scepticism towards this reasoning, it decided to adopt the same approach. The Tribunal pointed out that a suspension of action under article 13, if granted, is only for the period of a management evaluation and it is therefore in the hands of the Respondent, to a significant degree, to limit the cost of such an order.

In conclusion, the Tribunal decided, on balance, that the suspension of action should be granted until the management evaluation was completed and notified to the Applicant.

C. Decisions of the United Nations Appeals Tribunal

By resolution 61/261 of 4 April 2007, entitled "Administration of Justice at the United Nations", the General Assembly agreed that the new formal system of administration of justice should comprise two tiers, consisting of a first instance, the United Nations Dispute Tribunal, and an appellate instance, the United Nations Appeals Tribunal, rendering binding decisions and ordering appropriate remedies.

By resolution 62/228 of 22 December 2007, entitled "Administration of Justice at the United Nations", the General Assembly decided to establish a two-tier formal system of administration of justice, comprising a first instance United Nations Dispute Tribunal and an appellate instance United Nations Appeals Tribunal. It further decided that the United Nations Appeals Tribunal shall be composed of seven members who will sit in panels of at least three.

By resolution 63/253 of 24 December 2008, entitled "Administration of Justice at the United Nations", the General Assembly adopted the statutes of the United Nations Dispute Tribunal and United Nations Appeals Tribunal. It also decided that the United Nations Dispute Tribunal and the United Nations Appeals Tribunal shall be operational as of 1 July 2009.

No decisions were delivered by the United Nations Appeals Tribunal in 2009.

D. Decisions of the Administrative Tribunal of the International Labour Organization[22]

1. *Judgment No. 2778 (4 February 2009): G.J. B., G. D., M. G. and S. M.A.* v. *European Organization for Nuclear Research (CERN)*[23]

Five-year review of the financial and social conditions applicable to members of personnel—Freedom of international organizations to choose methodology, system or standard for determining salary adjustments for its staff—Chosen methodology must ensure that the results are stable, foreseeable, and clearly understood—Proper reasons must be given for departure from external standard of reference—Necessity to save money not in itself a valid reason for departing

[22] 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; Global Fund to Fight AIDS, Tuberculosis and Malaria; and the International Centre for the Study of the Preservation and Restoration of Cultural Property. 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/index.htm.

[23] Seydou Ba, President; Claude Rouiller and Patrick Frydman, Judges.

FROM ESTABLISHED STANDARD OF REFERENCE—MAINTENANCE OF DEGREE OF EQUIVALENCE WITH OTHER EMPLOYERS REFERS TO ALL FINANCIAL AND SOCIAL CONDITIONS—ENTITLEMENT OF THE ORGANIZATION TO OFFER OTHER ADVANTAGEOUS EMPLOYMENT CONDITIONS IN PREFERENCE TO HIGHER SALARIES—DECISIONS WITHIN DISCRETION OF THE ORGANIZATION ONLY REVIEWED BY TRIBUNAL IN CASE OF PLAIN MISUSE OF POWER

Every five years the European Organization for Nuclear Research (CERN) carries out a general review of the financial and social conditions applicable to the members of its personnel with a view to ensuring that these conditions remain competitive. Prior to the start of the review, the Council decides which financial and social conditions are to be covered by the review, and draws up a list of employers from which relevant data is to be collected for the purpose of comparing their conditions of employment with those offered by CERN. By a decision of 19 October 2006, the Council approved a package of measures proposed by the management to give effect to the findings of a five-yearly review conducted in 2005.

The four Complainants in the current case each lodged an internal appeal on 23 March 2007, in which they challenged the validity of the decision of 19 October 2006, and claimed that, had the Organization drawn valid conclusions from the five-yearly review, their salaries would have been significantly higher.

The Tribunal recalled its Judgments Nos. 1821 and 1912, in which it had determined that an international organization is free to choose a methodology, system or standard of reference for determining salary adjustments for its staff, provided that it meets all other principles of international civil service law, and that the chosen methodology must ensure that the results are stable, foreseeable, and clearly understood. Where the methodology refers to an external standard but grants discretion to the governing body to depart from that standard, the organization has a duty to state proper reasons for such departure. Furthermore, while the necessity of saving money may be one valid factor in adjusting salaries, the mere desire to save money at the staff's expense is not by itself a valid reason for departing from an established standard of reference.

Interpreting annex A1 of the Staff Rules, which lay down the principles and procedures governing the review, the Tribunal observed that the purpose of the five-yearly review was, ultimately, to enable CERN to have high-quality staff. The maintenance of a degree of equivalence with the conditions offered by other employers was therefore to be seen as a means to achieve that goal rather than as a goal in itself. The Tribunal emphasized that, in any case, the equivalence referred to was not specifically that of remuneration, but more generally that of all the "financial and social conditions" applicable to the members of the Organization's personnel.

The Tribunal observed that it may be deduced from the relevant provisions that the Organization must include remuneration among the conditions covered in the survey, and was obliged to examine whether an adjustment of salaries might be necessary. The financial rules did not however oblige the Organization to raise the salary scale based solely on a finding that the salaries had undergone a comparative deterioration, excluding the data concerning other relevant conditions. In addition, the "possible adjustments of remuneration" referred to in the Staff Rules did not necessarily have to take the form of a general increase in the salary scale. Despite their obviously more modest impact, the measures concerning the salary scale of certain career paths and the advancement scheme

which the Council had decided upon were indeed aimed at bringing about some adjustment of salaries. The Tribunal further noted that given the ultimate goal of five-yearly review, namely to enable the Organization to have staff of the highest calibre, it seemed natural that it should be entitled to offer the members of its personnel other advantageous employment conditions in preference to higher salaries, if such a choice appeared better suited to that goal.

The Tribunal concluded that the Council could not be said to have departed from the reference standard to which it was obliged to refer in its decision-making, the guide being not only the results of the comparative survey but more generally encompassing all data and analyses used in the preparation of the five-yearly review. Even if had been was the case, the Tribunal recalled Council was entitled to depart from the reference standard, given that it provided reasons for doing so. As reasons had been clearly set out in the proposal adopted by the Council, all three criteria set out in Judgments Nos. 1821 and 1912 had been met. The Tribunal dismissed as unfounded the claim made by the Complainants that the Organization had been guided by the necessity to achieve savings at the personnel's expense.

As to the contentions made by the Complainants that the Council had drawn blatantly wrong conclusions from the data submitted to it, and that the Organization favourably portrayed new provisions which personnel in fact derived very small advantages from, the Tribunal noted that these aspects lay within the discretionary powers of the Council, and would not be censured by the Tribunal but in cases in which the management had plainly misused its authority.

The Tribunal thus found that the Organization was entitled to refuse the general increase demanded by the Complainants, and dismissed the claim.

2. *Judgment No. 2791 (4 February 2009): E.H.* v. *European Patent Organization*[24]

Alternative recruitment procedure for post as Principal Director—Standing of individual Staff Committee members to file suits as representatives of that body—Recruitment should generally take place by way of competition—Alternative procedures may be used in exceptional cases, for recruitment to posts requiring special qualifications—Administration should specifically identify special qualifications required—Staff shall be informed of each vacant post—Staff should have been informed of the decision to abandon the initial recruitment procedure and adopt a new recruitment procedure—Staff should also have been informed of material change in the advertised post—Award of moral damages

In August 2003, a vacancy notice was published by the European Patent Office for the post of Principal Director, Corporate Communications Manager, at grade A6. Having considered the approximately 100 candidates who applied for the position, the Principal Director of Personnel considered that none of them was suitable, and decided, after consulting the staff representatives and the Vice-President of the Directorate-General 4, to engage a recruitment consultant. A few months later, the consultant presented the Office

[24] Mr. Seydou Ba, President of the Tribunal; Ms. Mary G. Gaudron, Vice-President; and Ms. Dolores M. Hansen, Judge.

with a list of ten candidates, who were interviewed by the Principal Director of Personnel, and of whom three were pre-selected. Mr. S, who was one of the three pre-selected candidates, but who had not submitted an application pursuant to the original vacancy announcement, was subsequently selected for the post.

On 14 January 2005 the Complainant, in her capacity as Deputy Chairperson of the Munich Staff Committee, asked the President of the Office to cancel the appointment of Mr. S, or to, otherwise, treat her letter as an internal appeal. She was informed by a letter of 28 February 2005 that the President had not acceded to her request, and that the matter had been referred to Internal Appeals Committee.

In its opinion of 10 October 2006, a majority of the members of the Appeals Committee considered that the Office had in the recruitment of a Principal Director conducted an arbitrary procedure which had infringed the "consultation rights" of the staff representatives. By a letter of 8 December 2006, which the Director of Personnel Management and Systems notified the Complainant that the President of the Office had decided to reject her appeal as receivable only insofar as it concerned the rights of the Staff Committee, and unfounded in its entirety. This is the impugned decision.

As to the *locus standi* of the Complainant, the Tribunal reiterated its constant ruling that individual members of the Staff Committee must have the power to file suits as representatives of that body, based on the rationale that if the Staff Committee was not able to file suits, the only way to preserve common rights and interests of staff was to allow individual officials to act as their representatives.

Article 7(1) of the Service Regulations provided that recruitment should generally be by way of competition, but it also allowed for an alternative procedure to be used in exceptional cases, for recruitment to posts which require special qualifications. The Tribunal pointed out, that in such exceptional case it was incumbent on the Administration to specifically identify those special qualifications required, as without that information, a potential complainant would have no basis upon which to assess whether there were grounds for a complaint under this provision. The Tribunal noted that the EPO justified its reliance on the exception with reference the seniority of the position and the close working relationship with the President. As the arguments put forth by the Office were simply descriptive of the position however, and did not identify the special qualifications required for the post, the Tribunal was not satisfied that the it had sufficiently justified its use of an alternative recruitment procedure.

As to the reliance by the Office on the absence of a recruitment procedure in the specimen contract, the Tribunal observed that it would be unnecessary and unexpected to find recruitment procedure information in an employment contract, which provides the terms and conditions of employment. In addition, as the Office had established specific terms and conditions for certain senior positions, the Conditions for Employment for Contract Staff, and in particular the recruitment provisions in article 3, did not apply to principal directors.

The Tribunal moved on to consider whether the Office had violated article 4(2) of the Service Regulations, which required that staff be informed of each vacant post when the appointing authority decided that the post was to be filled. In the view of the Tribunal, at the time that a recruitment consultant was engaged, a new recruitment procedure had been

adopted, and a decision had been taken to abandon the initial recruitment procedure. It stated that, at a minimum, the staff should have been informed that the recruitment had been assigned to a consultant and provided with information regarding the application process. The failure to do so constituted a violation of article 4 (2), which aimed to provided institutional transparency and which constituted a regulatory recognition and safeguard of a staff member's right to a fair opportunity to submit a candidature for a vacant post. Contrary to the assumption of the Office, article 4 (2) existed separately from the recruitment procedures, and was therefore applicable also in the case of an alternative recruitment procedure. Lastly, the Tribunal noted that the contract was ultimately entered into for a longer period than what was initially advertised. This was a material change of which staff members should also have been informed.

For these reasons, the Tribunal decided that the impugned decision be set aside. The Tribunal however concluded that it was beyond its power to order the Office to start a regulatory procedure by open competition for the post. The Complainant was awarded moral damages for the violations of the Service Regulations and the delayed processing of the internal appeal.

3. Judgment No. 2797 (4 February 2009):J. B. v. *International Labour Organization (ILO)*[25]

Use of external collaboration contracts for specific, well-defined tasks or advisory missions—Duties were not identical or ongoing, but diversified, and did not match the tasks of a "programme officer"—Question of inappropriate use of external contracts

The Complainant worked as an unpaid intern at the ILO Branch Office in Madrid between 17 July 2000 and 14 October 2001. On 15 October 2001, the Director of the office issued an external collaboration contract until 31 December 2001 under which the Complainant was to identify potential donors among the Spanish Autonomous Communities and draw up the relevant contracts. Nine external collaboration contracts were subsequently signed by the parties. There were breaks between some contracts and they had different purposes, apart from the last contract signed on 1 February 2005, the purpose of which was the continuation of the previous one. The last contract ended on 31 August 2005.

On 10 October 2005 the Complainant brought an action for wrongful dismissal before the Labour Court of Madrid, which on 16 January 2006 delivered a judgment against the ILO. In addition, on 24 October 2005, the Complainant filed a grievance with the Administration under article 13.2, chapter XIII, of the Staff Regulations of the ILO in which he requested a review of the "decision not to renew" his external collaboration contract which had ended on 31 August 2005. As his grievance was deemed inadmissible, he submitted the case to the Joint Advisory Appeals Board on 6 March 2006.

In its report of 26 March 2007, the Joint Advisory Appeals Board found the grievance to be admissible and recommended that the Director-General redefine the contractual relationship between the office and the Complainant; replace the external collaboration contracts with an equal number of fixed-term contracts for the period 15 October 2001 to 31 August 2005; and draw all the legal consequences of that redefinition. By a letter of 25

[25] Seydou Ba, President; Claude Rouiller and Patrick Frydman, Judges.

May 2007, the Executive Director of the Management and Administration Sector informed the Complainant that the Director-General rejected his grievance as inadmissible. This was the impugned decision.

The Tribunal rejected the Complainant's submission that he had in fact performed the duties of an official, and that the Organization thus had violated the provisions of circular No. 11, series 6, paragraph 1 (b), by making inappropriate use of external collaboration contracts. The Tribunal noted that the contracts signed by the Complainant related to specific well-defined tasks or to advisory missions for the benefit of the Madrid office, as expressly stipulated in these contracts. It accepted the Organization's submission that the diversity of tasks covered by the various contracts was sufficient to show that the title "Project Officer", which the Complainant claims to have held, did not in fact match the tasks he performed. Almost all of the contracts ended with the submission of reports written by the Complainant upon completion of his assignments. The Tribunal found that for five years the Complainant had carried out duties which were not identical or ongoing but diversified, and which had met the immediate needs of the Madrid office. The Tribunal further found that the facts of the case were thus not similar to those in Judgment No. 2708, and that no proof had been provided for the other claims in connection with circular No. 11.

The Tribunal also rejected the Complainant's claim that the Organization had violated circular No. 630, series 6, paragraph 12, as external collaboration contracts had not been used for a purpose other than that for which they were intended and complied with the rules applying to this type of contract.

The Complainant's claim to redefine his working relationship with the Office during the period from 17 July 2000 to 14 October 2001 was found by the Tribunal to be time-barred.

For the above reasons, the Tribunal dismissed the complaint in its entirety.

4. Judgment No. 2805 (4 February 2009): A.H. K. v. European Patent Organization (EPO)[26]

No requirement that grounds of appeal be specified when lodging an appeal—Interpretation of relevant Staff Regulations and Rules—If written regulations are silent on a matter, a term may be implied only if it is obviously comprehended within the text that its statement is unnecessary, or if it is necessary to give effect to some other term

The Complainant joined the European Patent Office in December 1986 as an administrative employee at grade B2. At the material time, he held a position at grade B3.

On 1 June 2005 the Complainant lodged a complaint of harassment involving four managers under circular No. 286 concerning the protection of the dignity of staff. Upon receipt of the complaint by the President of the Office, the formal procedure of resolution of harassment-related grievances was initiated in accordance with the aforementioned circular and the complaint was referred to the Ombudsman. In her report to the President of the Office on 9 March 2006, the Ombudsman concluded that there was no proven case of

[26] Mary G. Gaudron, Vice-President; Giuseppe Barbagallo and Dolores M. Hansen, Judges.

persistent or recurring harassment on the part of the managers. By letter of 19 May 2006 the President informed the Complainant that he had decided to reject the complaint.

In a letter to the President of 21 August 2006, the Complainant indicated that he was lodging an internal appeal against that decision under article 15 of circular No. 286 and that further details would be provided by his counsel at a later date. The Director of the Employment Law Directorate replied on 8 September 2006 that, due to the absence of a statement in support of his appeal, the President had not been able to examine the grounds for review of the contested decision, and had thus decided to reject the appeal. He added that the advice of the Internal Appeals Committee would be sought as soon as the Complainant provided sufficient reasons for contesting the President's decision.

The Complainant's counsel, contending that grounds of appeal were not necessary, requested in a letter on 6 March 2007 that the appeal lodged on 21 August 2006 be referred to the Internal Appeals Committee, alternatively that his letter be treated as a formal complaint of harassment lodged by the Complainant pursuant to article 9 of circular No. 286. The President replied on 29 March 2007 giving reasons for not meeting either of those requests, but not expressly refusing them. This was the decision impugned by the Complainant before the Tribunal on 11 June 2007.

In response to the Organization's plea of irreceivability for failure to exhaust the internal means of redress, the Tribunal observed that the issue at the centre of the complaint was whether it was necessary to provide grounds of appeal. If grounds of appeal were not required, the President's failure to meet the Complainant's request of 6 March 2007—conveyed by his letter of 29 March 2007—was properly to be viewed as a final decision rejecting the Complainant's appeal with respect to his harassment complaint, with no further avenue of internal appeal open to him.

The Tribunal noted that there was no express provision in the Service Regulations or in circular No. 286 requiring that grounds of appeal be specified when lodging an appeal. With regard to the Organization's contention that the requirement for the specification of the grounds of appeal was implied in the Service Regulations, the Tribunal held that where regulations and rules or other written documents were silent as to a matter, a term dealing with that matter may be implied only if it was so obviously comprehended within the text used in the regulations and rules or other document that its statement was unnecessary, or, if the term to be implied was necessary to give effect to some other term. The Tribunal held that the expressions "lodge an internal appeal" in article 107 and "[a]n internal appeal shall be lodged" in article 108 did not so obviously comprehend the formulation of grounds of appeal that the specification of that requirement was unnecessary. Neither was the specification of the grounds of appeal necessary to give effect to the terms of article 109 of the Service Regulations. The Tribunal explained that if no grounds were specified, the President may and, ordinarily, would reasonably conclude, that he cannot give a favourable reply. The first part of the President's obligation under that article would then be satisfied and he could, and should, proceed to convene the Internal Appeals Committee. If the President wished to ensure that, for the future, grounds for appeal were specified, he could take appropriate steps to bring that about. Thus, the complaint was held to be receivable.

For the above reasons, the Tribunal decided that the President's decision of 29 March 2007 should be set aside to the extent that it impliedly dismissed the Complainant's internal appeal of 21 August 2006 and refused to refer that appeal to the Internal Appeals Com-

mittee. The Tribunal directed the President of the Office to transmit the Complainant's internal appeal to the Internal Appeals Committee within ten days of the delivery of the Judgment. The Complainant's claim for moral damages was rejected. The Tribunal noted that since the Complainant's matter would have been referred to the Internal Appeals Committee in a timely manner had he provided the grounds of appeal as he indicated in the letter of 21 August 2006, both sides were equally to blame for the delay that had ensued.

5. *Judgment No. 2809 (4 February 2009): N.S.* v. *European Organization for Nuclear Research*[27]

Non-award of an indefinite contract to staff member—Different procedures for recruitment and awarding of indefinite contracts to staff members—In the latter case, it is sufficient to advise eligibile staff members that long-term positions are available in their field of activities—No breach of the requirement of reciprocal and mutual trust between Organization and staff member—Positive annual appraisal cannot be substituted for the conclusions of a selection board—Within discretion of an Organization to set out rules for conducting assessments for awarding of contracts

The Complainant was a Swiss national and joined European Organization for Nuclear Research (CERN) in 1993. In 2001 he became a staff member with a three-year limited-duration contract, which was renewed for an additional three years in 2004. He was subsequently granted an exceptional extension of this contract from 1 July to 31 December 2007.

In 2006, CERN changed its contract policy under which the limited contract could be converted into indefinite contracts on the condition established by administrative circular No. 2 (Rev. 3) (the "circular"). As three long-term jobs became available within the physics department's manpower plan, the Human Resources Department proposed on 21 April 2006 that the Complainant be assessed by the Departmental Contract Review Board (DCRB) for the award of an indefinite contract. At the end of this assessment, the DCRB considered that the Complainant met all the criteria of the circular, but was critical of his communication skills, resulting in a lower ranking. On 16 October 2006, the Director-General informed the Complainant that he had decided not to award him an indefinite contract.

On 12 December 2006, the Complainant appealed against the Director-General's decision. In its report of 4 July 2007, the Joint Advisory Appeals Board recommended that the appeal be dismissed. The Director of Finance and Human Resources, acting on behalf of the Director-General, subsequently informed the Complainant that he had decided not to award him an indefinite contract. That was the impugned decision.

The Tribunal noted that reference should be made to Judgment No. 2711, in which the Organization's new contract policy was fully described. Under this new policy, an indefinite contract could be awarded provided that there was at least one long-term job available for the activity concerned within the manpower plan of the department, and that the candidate fulfilled the activity-linked criteria. It also set down personal criteria, which

[27] Mr. Seydou Ba, President of the Tribunal; Mr. Claude Rouiller and Mr. Patrick Frydman, Judges.

included performance, conduct, initiative, commitment and flexibility, ability to integrate and ability to communicate.

In response to the contention made by the Complainant that the recruitment procedure had been flawed, the Tribunal noted upon reading of the circular that the procedures differed depending on whether the procedure concerned recruitment, or the awarding an indefinite contract to a staff member already working within the Organization. In recruitment situations, a vacancy announcement should indeed be publicized to attract qualified candidates. As to the awarding an indefinite contract however, this was one of the "possible developments regarding the contractual position" mentioned in the circular, in which case it was sufficient to advise eligible staff members that one or more long-term positions existed in their field of activities. The Complainant had in the present case been informed of this availability, and had not raised any objections to being assessed pursuant to the terms and procedure laid down in the Circular. It could therefore not be said that the Organization had conducted the procedure in breach of relevant texts or contrary to the Tribunal's case law. Similarly, the Tribunal found that the Complainant had had the right to be heard, as he had the possibility to appraise the Director-General of his comments before a final decision was made. Further, the comments of the Complainant had been taken into account in the final report of the DCRB, on the basis of which the Director-General had made his decision.

The Tribunal rejected the complaint that the Organization had acted in breach of the requirement of reciprocal or mutual trust. It stated that there was no need for the Organization to bring to the attention of the staff the manpower plan which contained the number of filled and vacant posts. According to the wording of the Circular, the Organization's sole duty when deciding whether to award an indefinite contract was to inform the staff candidates that there was at least one long-term job available for the activity concerned. In the present case, the Organization was deemed to have had fulfilled its duty in this regard. The Tribunal was also of the view that the question of the number of available jobs was irrelevant for the Complainant, as he could be assessed as long as there was at least one long-term job available in his field of activities.

Finally, in response to the contention made that the DCRB report contained manifestly erroneous conclusions in the light of the Complainant's excellent appraisal reports, the Tribunal held that a good performance record did not in itself justify selecting one candidate rather than another. The opinion of the author of an annual appraisal could not be substituted for the conclusions of a selection board which was responsible for selecting the best candidate for the award of an indefinite contract. The Tribunal found that the Complainant's annual appraisal reports had been taken into account, and that due regard had been given to his comments and to those of his supervisors before the DCRB report had been submitted to the Director-General for a final decision. The Tribunal concluded that it lay within the discretion of each Organization to set its own rules for conducting an assessment; and as the assessment in the present case complied with the rules established by the Circular, it would refrain from assessing the candidates on merit or rule on the Organization's choice.

6. *Judgment No. 2840 (8 July 2009): K. J. L.* v. *World Health Organization*[28]

Receivability of complaint by former staff member—No regulatory provision in WHO Staff Regulations and Rules on access to the internal appeal process by former staff members—Under such Regulations and Rules, a former staff member does not have recourse to the internal process where a decision was communicated to her after separation from the Organization

The Complainant was a former staff member of the World Health Organization (WHO), who had joined the WHO Regional Office for Europe (EURO) in Copenhagen as a Human Resource Officer at grade P-3 in the Division of Administration and Finance on 1 September 2003. On 1 July 2005, her appointment was extended until 31 August 2007. On 14 September 2005, the Complainant went on sick leave and was subsequently diagnosed as suffering from a service-incurred stress disorder. On 15 September, she informed the Regional Director for Europe of her decision to resign. The Regional Director accepted her resignation on 19 September.

By letter of 24 November 2005, the Acting Human Resource Manager informed the Complainant that the necessary formalities for her separation from service, which according to staff rule 1010.1 would take effect on 15 December 2005, had been initiated. He acknowledged that in view of her recent medical certificate she might not be able to return to duty before the effective date of resignation and explained that in that case the Director of Health and Medical Services would consider her medical condition in the light of WHO Manual, paragraph II.9.570.4, and revert back to her on this matter.

The Complainant's effective date of resignation was deferred twice owing to the extensions of her sick leave by letters of 13 December 2005 and 21 April 2006, the latter changing the terms of the Complainant's sick leave status to sick leave under insurance coverage. She was also informed that the period of sick leave under insurance coverage would continue until she was either declared fit to work or her entitlement thereunder was exhausted. In a medical report dated 14 November 2006, the Complainant's treating physician attested that the Complainant's condition was improving but that it could not be excluded that her depressive symptoms might reappear if she returned to work. He noted that it would be possible for her to resume work at a job outside EURO.

By letter of 21 December 2006, the Human Resource Manager notified the Complainant that on the basis of the latest medical reports her sick leave would end on 31 December 2006, that the administrative formalities had been completed, and that she would in due course receive a Personnel Action to reflect her separation from service with effect from 1 January 2007. The Personnel Action was sent to the Complainant on 12 January 2007. The Organization contests that an annex entitled "Administrative formalities in connection with separation from service" was enclosed with that letter indicating that the Director of the Health and Medical Services had confirmed that in her case "an exit medical examination [was] not necessary"; this is disputed by the Complainant.

An exchange of e-mails ensued between the Complainant, Dr. G. M. and the Director of Human Resources Services, in which the Complainant stated that she had been separated from the Organization without having undergone a medical examination, as required under staff rule 1085. In an e-mail of 6 March 2008 the Director of Administration and

[28] Seydou Ba, President; Mary G. Gaudron, Vice President; and Dolores M. Hansen, Judge.

Finance replied that, on the basis of the Complainant's medical reports, she had on 23 November 2006 been assessed as fit for work, and accordingly her separation had taken effect on 1 January 2007 in accordance with Manual paragraph II.7.570.4. He added that, in light of the detailed medical record of her state of health following the examination by WHO on 16 of August 2005, and the medical reports received from her treating physician throughout 2006, the relevant provisions of the Staff Rules and the WHO Manual were considered to be fulfilled. On 5 May 2008, the Complainant lodged a complaint with the Tribunal impugning the decision of 23 November 2006.

The Tribunal rejected the Defendant's submission that the complaint was time-barred, as the decision of 23 November 2006 that the Complainant would not undergo an exit medical examination was first communicated to the Complainant on 6 March 2006. Taking into account the mandatory nature of the examination and its potentially significant legal consequences for both parties, the Tribunal found that a deviation from this norm had not been specifically communicated to the Complainant neither in the letter of 21 December 2006 or in the annex to the letter of 12 January 2007.

The Tribunal next considered whether the Complainant was required to or, indeed could, access the internal appeal process after March 2008, given the fact that she no longer was a staff member of the WHO. The Tribunal noted that the WHO Staff Regulations and Staff Rules did not contain regulatory provisions similar to those of other international organizations that specifically contemplate access to the internal appeal process by former staff members. Noting that there was no precedent on this issue, the Tribunal held that under WHO Staff Regulations and Staff Rules a former staff member did not have recourse to the internal appeal process where a decision has been communicated to her first after separation from the Organization.

For the above reasons, and with reference to Judgment No. 2582, the Tribunal concluded that in these circumstances the former staff member had recourse to the Tribunal and her complaint was thus receivable. The Organization was given thirty days from the delivery of the Judgment to file its reply on the merits.

7. Judgment No. 2846 (8 July 2009): G. L. N. N. v. European Patent Organization[29]

Promotion pursuant to "age-50 rule"—Promotion Board should examine merits of the staff member individually and having regard to the overall quality of work performed in the service of Organization

The Complainant joined the European Patent Office at grade A3 in November 1991, and was granted a permanent appointment on 1 May 1993. As from 2001 his deteriorating state of health occasioned many absences on sick leave, and on 1 December 2004 he was granted an invalidity pension.

In its Judgment No. 2272, delivered on 4 February 2004, the Tribunal held that the President of the European Patent Office had committed an error of law and abused his authority by abandoning the "age-50 rule" as from 1999. This rule, which had been applied consistently from 1981 to 1998, stipulated that promotion to the A4 grade at age 50 would be offered to all who have served at least 5 years in the A3 grade, irrespective of their total previous experience, provided their record of work was good.

[29] Seydou Ba, President; Claude Rouiller and Patrick Frydman, Judges.

Following that Judgment, the President decided to refer to the Promotion Board all other cases from 1999 onwards of employees who might be eligible for promotion to A4 at the age of 50, in order for the Promotion Board to recommend promotions for all those in the A3 grade who met the criteria. However, the Complainant was not granted a promotion.

On 15 March 2005, relying on the age-50 rule, he requested retroactive promotion to grade A4 as from 24 March 2001. In its opinion of 7 August 2007 the Internal Appeals Committee unanimously recommended that the appeal be rejected. The Complainant was informed by letter of 28 September 2007 that the President of the Office had decided to follow the Committee's recommendation to reject his appeal. Moreover, he was informed that the staff report covering the period from 1 January 2000 to 6 September 2001 gave him an overall performance rating of "less than good", and would be finalized and placed in his personal file. That was the decision challenged before the Tribunal.

The Tribunal pointed out that the President of the Office, in his 2001 note to the Chairmen of the Promotion Boards, had stated that employees over the age of 44 with more than 19 years of recognized experience could be promoted to grade A4 provided that their record of performance had been "good" during a period of time covering at least three normal reporting periods. The Tribunal held that the criteria laid down in this note could not be applied automatically by the Promotion Board, which should have examined the Complainant's merits individually. It would be contrary to the purpose of the age-50 rule to assess an employee's merits without any regard for the overall quality of the work he or she has performed in the service of the Organization, as reflected in his or her file as a whole.

Taking into account the fact that the Complainant had consistently obtained the rating "good" for all aspects of his performance in his staff reports between 1992 and 1999, and that the "less than good" rating for the reporting period from 1 January 2000 to 6 September 2001 had not been finalized in an adversarial manner, probably owing to the Complainant's poor health, the Tribunal found that the Organization could not refuse to promote the Complainant.

The impugned decision was thus set aside and the Tribunal held that the Organization must promote the Complainant to grade A4 with retroactive effect from 1 April 2001.

8. *Judgment No. 2854 (8 July 2009): R. B. B.* v. *International Federation of Red Cross and Red Crescent Societies (IFRC)*[30]

Lawfulness of termination of appointment—No abuse of authority nor retaliation—Definition of "hidden sanction"—Termination constituted hidden disciplinary sanction and must be set aside—Where termination constitutes a hidden disciplinary sanction and reinstatement is not appropriate, compensation should be assessed on the basis of what would have occurred if proper procedures had been followed—Award of compensation and moral damages

The Complainant was the former Head of the Federation's Risk Management and Audit Department. He joined the Federation on 7 January 2002 under a fixed-term appointment and was granted an open-ended contract on 1 January 2005. By letter of 13 July 2007, the Secretary General of the Federation terminated the Complainant's appointment as

[30] Seydou Ba, President; Mary G. Gaudron, Vice-President; Dolores M. Hansen, Judge.

Head of the Federation's Risk Management and Audit Department "in the interest of the Federation", pursuant to article 11.4 of the Staff Regulations, with effect from 31 December 2007.

The Secretary General referred in his letter to a "fundamental disagreement" between himself and the Complainant as to the role of the internal audit function. According to the Secretary General there had been a number of incidents in which the Complainant had communicated with the Finance Commission, the President of the Federation, the Governing Board and representatives of National Societies on such issues as periodic appraisals and audits without first obtaining his approval.

On 15 September 2007, the Complainant initiated an internal appeal against the decision of 13 July 2007 before the Joint Appeals Commission. The Commission pointed out that there was a professional difference of opinion between the Complainant and the Secretary General over the audit function, over which it was not qualified to render judgement. However, it held that valid grounds for termination had existed as early as April 2006, and expressed its perplexity as to why the Secretary General had allowed so much time to pass before taking "definitive action" in July 2007. The Commission recommended that "a mutually agreed and realistic compensation arrangement" be concluded. However, an agreement was not reached and, by letter of 18 December 2007, the Secretary General informed the Complainant that he had decided to maintain the decision of 13 July 2007. This was the impugned decision.

The Tribunal rejected the Complainant's arguments that the impugned decision constituted an abuse of authority and/or retaliation for having informed members of the governing bodies of his concerns that the Secretary General and Finance Commission had violated the Federation's Code of Conduct. The Tribunal pointed out that the immediate cause of the decision was the Complainant's communication during March and April 2007 with the President and members of the Governing Board in respect to the formation of an audit and management committee, which was authorised neither by the Complainant's job description nor by the Internal Audit Charter.

With regard to the Complainant's plea, alleging that the impugned decision was tainted with procedural irregularities and amounted to a disguised disciplinary measure, the Tribunal referred to Judgment No. 2090, in which it stated that the provisions of the Federation's Staff Regulations dealing with termination did not authorise the arbitrary termination of contracts, and added that "there must be no breach of adversarial procedure [. . .] nor abuse of authority, nor obvious misappraisal of the facts". Thus, a decision purportedly taken under article 11.4 of the Staff Regulations in the interests of the Federation would be set aside if it constituted a disguised disciplinary measure, since a decision of that kind was not taken in the interest of the Federation but for the purpose of avoiding the procedural requirements that must be observed in the case of disciplinary measures. The Tribunal reiterated, with reference to Judgment No. 2659, the definition of a hidden sanction as "a measure which appears to be adopted in the interests of the Organization and in accordance with the applicable rules, but which in reality is a disciplinary measure imposed as a penalty for a transgression, whether real or imaginary". Since there could be no doubt that the Secretary General was of the view that the Complainant's unauthorised communications with the President and members of the Governing Board constituted

misconduct, the Tribunal concluded that the Complainant's termination constituted a hidden disciplinary sanction and that the impugned decision must be set aside.

The Tribunal did not find the Complainant's plea, alleging that the impugned decision was the result of bias or malice on part of the Secretary General or that it was discriminatory, substantiated. Both the Secretary General and the Complainant were wrong in their disagreement as to the role of the internal audit function. The Secretary General wrongly obstructed the Complainant's right of direct access to the Finance Commission in respect of audit material, while the Complainant did not have a right or duty to communicate with the President and members of the Governing Board.

The Tribunal held that in a case such as the present one where termination constituted a hidden disciplinary sanction and reinstatement was not appropriate, compensation should be assessed on the basis of what would have occurred if proper procedures had been followed. The Tribunal pointed out that article 11.2.1 of the Staff Regulations allowed for termination with notice, "after a formal written warning allowing three (3) months for improvement", if a staff member did not maintain satisfactory relations with the Secretary General. Thus, if proper procedures had been observed, the Complainant would have been retained in employment for the duration of the warning and notice periods, amounting, in all, to approximately nine months. Given that the Complainant has had the benefit of five months' notice, the Tribunal held that it was appropriate for compensation to be awarded for four months following the expiry of the notice period specified in the letter of termination of 13 July 2007. In addition, the Complainant was awarded moral damages in the amount of 20,000 Swiss francs.

9. Judgment No. 2856 (8 July 2009): J. L. v. *International Labour Organization*[31]

Reassignment to new post following suppression of position due to replacement of IBM mainframe system—Receivability of claim different issue from question of mootness—A claim is moot when there is no longer a live controversy between the parties—An international organization necessarily has power to restructure some or all of its departments or units, including by the abolition of posts, the creation of new posts and the redeployment of staff—Transfer of non-disciplinary nature should show regard, in form and substance, for the dignity of the individual—Duty to provide training—Organization had done its utmost to respect Complainant's dignity and good name and not to cause him harm

The Complainant joined the International Labour Office, the International Labour Organization (ILO) Secretariat, in 1983 as a Systems Programmer at grade P-2 in the Bureau of Information Systems, which subsequently became the Information Technology and Communications Bureau (ITCOM). His position was reclassified twice and he was promoted to grade P-3 with effect from 1 February 1988 and to grade P-4 with effect from 1 August 1995. He held a contract without limit of time since July 1989.

The Complainant's main responsibility was the maintenance of the Office's IBM mainframe system within ITCOM. In 2003, the Office was in the process of developing the Integrated Resource Information System (IRIS), an Oracle-based enterprise resource planning system, designed to replace the IBM mainframe system. As the IRIS became fully

[31] Seydou Ba, President; Mary G. Gaudron, Vice-President; and Dolores M. Hansen, Judge.

operational on 30 June 2005 and the IBM mainframe system ceased to operate, the Complainant's position was suppressed. Further to the suppression of his position, the Complainant was in December 2005 assigned to the position of Applications System Administrator in ITCOM, which was classified as a P.3 position.

On 31 May 2006 he filed a grievance with Human Resources Development Department (HRD), arguing that his transfer to a position at grade P.3 was inequitable. A process of informal dialogue ensued, during which it was agreed that the P.3 position would be designated as P.4 for as long as the Complainant remained in it. However, it was determined that he was not actually performing all the duties attributed to the said position and that therefore additional training should be envisaged. On this basis, an updated skills assessment was carried out and a training plan was established. On 15 December 2006 the Administration confirmed the Complainant's transfer to the position of Applications System Administrator at grade P.4 with retroactive effect from 1 July 2005.

On 19 December 2006, the Complainant filed a grievance with the Joint Advisory Appeals Board pursuant to article 13.3.2 of the Staff Regulations against the implied rejection of his initial grievance filed with HRD on 31 May 2006. In his additional submissions of 6 March 2007 he requested a personal promotion with immediate effect to grade P.5. On 22 December 2006 the Director of the HRD informed the Complainant that, in light of his transfer and the minute of 15 December, HRD considered that the matter had been administratively resolved. The Board issued its report on 25 June 2007, and by a letter dated 24 August 2007 the Complainant was informed that the Director-General had followed the Board's recommendations and dismissed the grievance as moot and devoid of merit. It was this decision that the Complainant impugned before the Tribunal.

As to the Organization's argument that the claim was irreceivable as moot, the Tribunal observed that a plea of mootness was not an issue of receivability. It pointed out that, as a matter of law, a claim was moot when there was no longer a live controversy. Whether or not there was a live controversy was, however, a matter to be determined by the Tribunal. Thus, even if a claim was moot it could still be receivable. The Tribunal proceeded to conclude that a live controversy did exist between the parties and that the complaint thus should be examined on its merits.

Recalling its Judgment 2510, the Tribunal pointed out that "an international organization necessarily has the power to restructure some or all of its departments or units, including by the abolition of posts, the creation of new posts and the redeployment of staff". Thus, as stated in Judgment 1131, the organization's decisions on these matters were to be considered discretionary and the Tribunal's power of judicial review in this respect was limited. With regard to the Complainant's contention that his transfer to a lower-grade position was unlawful and humiliating, the Tribunal found it useful to recall its findings in Judgment 2229, in which it stated that a transfer of a non-disciplinary nature should show regard, in both form and substance, for the dignity of the individual concerned, particularly by providing him with work of the same level as that which he performed in his previous post and matching his qualifications.

As to the Complainant's contention that he was not put in a genuine P.4 position since a revised job description reflecting the change from P.3 to P.4 had not been issued, the Tribunal noted that the reason for the restructuring was the implementation of the new Oracle-based system and that the shift to the new system required the acquisition of new

knowledge and skills. The Tribunal pointed out that the Complainants had not adduced any evidence that he had the specific knowledge and skills required to function in a "genuine P.4 position" within the Organization's new Oracle-based system. While he had 27 years of experience, the unfortunate reality was that his experience was limited to the IBM mainframe system. The question remained however, whether the Organization failed to provide the Complainant with the proper training and the appropriate amount of exposure to the new Oracle-based system in order for him to be transferred to an adequate position. The Tribunal concluded that in the circumstances, the Organization had done its utmost to respect the Complainant's dignity and good name and not to cause him any harm. Despite that fact that the Complainant did not possess the requisite skills, his personal grade had not been altered; and in view of his skills deficiencies, it had not been possible to give him work at P.4 level within the Oracle-based system.

For the above reasons, the Tribunal dismissed the complaint.

10. Judgment No. 2857 (8 July 2009): L. R. M v. *European Patent Organization*[32]

Decision to cancel contract with external insurance broker in favour of self-insurance by staff—Retroactive deduction from salaries to cover deficit in provisional contributions for insurance—*De facto* change in Office decision to endorse Board's recommendation in full when refusing to provide information required—Insufficient information provided for the General Advisory Committee to give a reasoned opinion—When asking for approval of contribution rates, necessary to show how one arrived at those rates

The Complainant joined the European Patent Office in 1990. He was at the material time a member of the General Advisory Committee (GAC), appointed by the Staff Committee. The GAC was a joint body responsible for giving reasoned opinions, *inter alia*, on any proposal to amend the Service Regulations or to make implementing rules thereto, or on any proposal which concerned the staff as a whole or in part.

In 2001, the President of the Office proposed to cancel the contract with the external insurance broker covering the risks of death and permanent invalidity. The proposal explained that due to the increase in staff, self-insurance had become actuarially acceptable, that it would be more economical, and would serve to cut out the insurance company's profit margin. By decision CA/D 7/01 of 28 June 2001, the Administrative Council of the European Patent Organization (EPO) approved the proposal, and adopted, *inter alia,* implementing rules for article 84 of the Service Regulations, setting out the provisional contribution rates for death and total permanent invalidity insurance for the period of 2002–2004, and stipulated that a review would be conducted at the end of 2004, in order to make any necessary adjustment for the previous period, and to fix the provisional contribution rates for the following period. On 8 November 2004, the Principal Director of Personnel submitted a review of the provisional contribution rates for death and permanent invalidity insurance for the period 2002–2004 to the GAC, and invited it to give an opinion on the text of a draft circular which set out the final contribution rates for that period and the provisional rates for 2005. According to the review, the provisional contribution rates for 2004–2005 were not high enough to cover the benefits paid.

[32] Augustín Gordillo; Guiseppe Barbagallo; Dolores M. Hansen, Judges.

While the GAC members appointed by the President expressed a positive opinion of the proposal, those appointed by the Staff Committee declared themselves unable, for lack of information, to give a reasoned opinion. By circular No. 283 of 13 December 2004, the staff were informed that the provisional contributions were not sufficient to cover the benefit payments and that an estimate of the rates necessary to finance the benefits had shown that an amount of approximately 7.5 per cent of one month's basic salary would have to be recovered; consequently, this amount would be deducted from the retroactive salary adjustments to be paid in December 2004.

The Complainant contested the aforementioned circular as he considered the deduction from his December salary and the subsequent increase in the contribution rates to be illegal. The matter was referred to the Internal Appeals Committee (IAC), which on 14 January 2005 unanimously recommended that circular No. 283 be deemed marred by serious procedural irregularities and be set aside with retroactive effect. It further found that the GAC had not been in a position to establish whether the Office had correctly applied the premium-calculated methodology set forth in decision CA/46/1 on the basis of the documents available to it during its deliberations. The IAC thus recommended that EPO resubmit the contributions for the period 2002–2004 first to the GAC, and then to the Administrative Council for final decision. On 25 May 2007, the Complainant was notified of the President's decision to accept the unanimous recommendation of the IAC setting aside Circular No. 283 retroactively. This was the impugned decision.

The Tribunal first considered the receivability of the complaint. The Complainant challenged the "*de facto* rejection" of the IAC's recommendation stemming from the fact that insufficient documentation was again submitted to the GAC following the decision of 25 May 2007, indicating bad faith on the side of the Office. The Tribunal observed that in agreeing to resubmit documentation to the GAC, it stood to reason that the Office should have included everything that was requested by the GAC when it was consulted the first time. Instead, by submitting incomplete documentation, the Office had changed its previous decision to endorse the recommendation by the IAC, to endorsing it only in part. When the GAC, including the Complainant, informed the President of the Office on 28 September 2007 that it had not received sufficient information to form a reasoned opinion, the Complainant was informed of the *de facto* change in the Office's position, and correctly filed a complaint with the Tribunal within ninety days.

Having reviewed the documents submitted to the GAC the first and the second time, the Tribunal was of the opinion that there was not enough difference between the documents to consider their submission as a new decision which would had have to be appealed before the IAC.

Therefore, the Tribunal found that the EPO must consult the GAC again, providing the requested information. When asking for approval of the established contribution rates, the Tribunal noted, it was necessary to show how one had arrived at those numbers. Specifically, it would be necessary to first show the basis for the estimated contribution rate calculations leading to the switch from an external insurance broker to self-insurance, and then to show the basis for the final calculations of the contribution rates for the period 2002–2004. Having specified the basis for the calculations, the EPO could then point out what elements caused the drastic increase in the contribution rates. The EPO must also submit information regarding the previous period which showed the payment of benefits

per annum according to the group of staff, the number of invalidity cases in each group and any other information that would be useful in clarifying the reasons for the drastic increase in the contribution rates. Based on such information, the GAC should be able to form a reasoned opinion.

The Tribunal concluded that the impugned decision should be set aside and circular No. 283 be annulled *ab initio*. Each staff member represented by the Complainant was awarded one euro in moral damages. However, the Tribunal decided not to award punitive damages as it had not been proved that the Organization had acted in bad faith.

The Tribunal was of the opinion that the case should be sent back to the EPO which must resubmit the necessary documentation and information first to the GAC and then for a final decision in accordance with established procedures. If it was later concluded that adjustments would have to be made in the Complainant's favour, the Organization would have to repay the wrongly deducted amounts levied by the Office. However, as it was not clear whether this was the case, it would cause unfair detriment to the Organization in terms of the heavy administrative and financial burden, while offering an unjustified enrichment to the Complainant, to order such a refund at this point.

E. Decisions of the World Bank Administrative Tribunal[33]

1. Decision No. 391 (25 March 2009): Anu Oinas v. *International Bank for Reconstruction and Development*[34]

Conversion of appointment to regular position—Issue of discrimination with regard to mandatory retirement age and pension benefits—Not within Tribunal's power to order discontinuation of mandatory retirement policy or to order the Bank to modify its policy—Role of Tribunal to examine case of non-observance of contract of employment or terms of appointment—Setting of age limits within the Bank's employment policy not *per se* incompatible with principle of non-differentiation—Principle of parallelism with the International Monetary Fund implies that IMF policies should only be used as reference point

The Applicant was employed with the Bank as a non-regular staff member ("NRS") since 1 August 1986. The Applicant's NRS contract came to an end on 26 June 1998. In December 1998 she was appointed to an open-ended position with the Bank where she

[33] 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.

[34] Jan Paulsson, President, and Judges Francisco Orrego Vicuña, Sarah Christie, and Florentino P. Feliciano.

worked until reaching the age of retirement of 62 on 30 September 2007. Accordingly, the Applicant's appointment was in effect converted to a regular appointment after she had worked for the Bank for 12 years (1986–1998). At the time the Applicant's appointment was converted, the Gross Pension Plan of the Staff Retirement Plan had been closed to new participants. The Applicant thus became a participant in the Net Pension Plan which was introduced for regular staff appointed on or after 15 April 1998.

In the view of the Applicant, the Net Plan provided for lesser benefits than the Gross Plan, but did not provide for upward adjustment of the mandatory retirement age for the participants in the Net Plan. This created, according to the Applicant, an imbalance in the available benefits. The Applicant requested that the Tribunal order the Bank to cease to apply its mandatory retirement age policy or, alternatively, to modify its policy with regard to former NRS members, such as herself, covered under the Net Pension Plan by raising the mandatory retirement age for herself and those employees to at least 65.

In considering the case before it, the Tribunal was mindful that it was not a policy-making or a policy-reviewing institution. Accordingly, the Tribunal concluded that the Applicant's petition to have the Tribunal order the discontinuation of the mandatory retirement policy or, in the alternative, to order the Bank to modify its policy with regard to former NRS members participating in the Net Plan, was beyond the powers of the Tribunal.

The Tribunal recalled that its role was to examine whether there had been non-observance of the contract of employment or terms of appointment of the Applicant. Having regard to the Bank's Principles of Staff Employment, the Tribunal opined that setting age limits within the Bank's employment policy was not *per se* incompatible with the principle of non-differentiation. In *Crevier*, Decision No. 205 [1999], the Tribunal held "because staff members in different situations will normally be governed by different rules or provisions . . . discrimination takes place where staff who are in basically similar situations are treated differently." In this case, the Tribunal held that since former NRS members appointed after 15 April 1998 were treated under the same rules governing the Net Pension Plan, there is of course a difference with those governed by the Gross Pension Plan, but those within the same group are not treated differently.

The Tribunal noted that, while the parties have disagreed on the objectives of the policy reform and whether it had any connection with the rationale for mandatory retirement, in adopting a broad and fundamental reform of this kind the governing institution must take into account the various elements that influence employment policy and not just any one element in isolation. Retirement age is a crucial factor in any pensions system and could not have been overlooked in this case.

While national and regional legal systems may have adopted their own policy with regard to mandatory retirement age, the Tribunal stressed that it is for the Bank to make its own policy determinations in the interest of the institution and the collective well-being of staff members. Change to Bank policies that track trends based on macroeconomic developments in given countries or regions could have adverse effects on staff members. In any event, the Tribunal held that the conditions referred to by the Applicant and set out in the European Court of Justice's decision in *Palacios de la Villa* had been satisfied.

Furthermore, in response to the reference made by the Applicant to the standards of the International Monetary Fund (IMF), the Tribunal clarified that the principle of paral-

lelism with the IMF does not mean that the Bank is tied to IMF policies but rather that they should be used as a reference point.

The Tribunal hence dismissed the application.

2. *Decision No. 397 (1 July 2009): AG* v. *International Bank for Reconstruction and Development*[35]

Referral to national authorities of confidential information concerning investigation against staff member—Leak of confidential information to the press—Decision to make a referral to national authorities to initiate criminal proceedings against a staff member must be based on a written opinion of the General Counsel—Procedures established should ensure that staff members are provided with information of such referrals in a timely manner —Decision to investigate a leak of information is a discretionary managerial decision—Since evidence strongly suggested that the leak could have originated from the investigating office of the Bank, the matter should have been referred for an independent investigation—Potential prejudice to staff member's due process rights

The Applicant worked with the Bank from 1998 to 19 June 2003 when his position was terminated following an investigation by which the Department of Institutional Integrity (INT) found that he had received a bribe of $12,000 from a contractor working on a Bank-financed project. The Applicant did not challenge the termination of his employment before the Tribunal.

On 24 July 2003, the Bank referred his case to the United States Department of Justice (DOJ) believing it had collected evidence that the Applicant may have violated the laws of the United States and Switzerland. The DOJ requested that the Bank delay notifying the Applicant of this referral for six months so as to preserve the integrity of the evidence and to avoid frustration of its efforts to identify other potential applicants in the alleged crimes. As the six-month period was to expire, on 4 February 2004, the Bank referred the Applicant's case to the United States Internal Revenue Service (IRS). The IRS similarly requested that the Bank delay notifying the Applicant of the referral for six more months. On 27 January 2005, the IRS made a further request to the Bank to delay notification for six months. The Bank also referred the same case to the Swiss authorities, and failed to inform the Swiss authorities of its requirement to notify the Applicant of the referral. The Bank did not notify the Applicant of this referral. In fact, on 23 November 2004, the Applicant asked the Bank whether it had referred his case to any national authorities but did not receive a reply thereto.

On 22 June 2005, the Swiss authorities informed the Bank that they did not plan to pursue any charges against the Applicant. On 12 July 2005, the IRS also informed the Bank that they did not intend to investigate the Applicant further. The DOJ reached a similar conclusion. Pursuant to the Treaty of 25 May 1973 between the United States and Switzerland on international mutual assistance in criminal matters, the DOJ informed the Applicant that Switzerland had decided not to pursue any charges against the Applicant.

[35] Jan Paulsson, President, and Judges Francisco Orrego Vicuña, Sarah Christie, Florentino P. Feliciano, Zia Mody, Stephen M. Schwebel and Francis M. Ssekandi.

The Bank notified the Applicant on 20 July 2005 of the referrals to the criminal authorities but did not send any of the documents. The Applicant asked for the documents on 11 and 22 August 2005, and on 2 September 2005 the Bank assured him that he would receive them "shortly". However, at that time the Bank contacted the U.S. Attorney's Office which had expressed an interest in the case. The Attorneys' Office asked the Bank to delay informing the Applicant of the contents of the referral for two months. On 23 September the Bank informed the Applicant that pursuant to DOJ's request he would not receive any "documents or information pertaining to his case." A series of further deferral requests were made by the U.S. Attorney's Office over the course of some two years. The latest deferral was for a period of two months and expired on 24 June 2009.

The Applicant was contacted by a reporter from a U.S. newspaper on 17 January 2006 who asked him a number of questions, which included references to very specific confidential information that seemed to originate from INT's Report of Investigation, in preparation for an article on fraud and corruption at the Bank. On 8 February 2006, the Applicant forwarded a copy of this e-mail message to INT and asked that it investigate the leak. Two days later, he was informed that INT would not conduct an investigation because "[a]bsent credible information of an unauthorized disclosure by a staff member or staff members, it would be inappropriate for the Bank to engage in a fishing expedition." A few weeks later, an article was published in U.S. News & World Report, naming the Applicant, and including detailed information about the Bank's investigation of him.

The Applicant contended that the Bank secretly and improperly referred confidential information about him to national authorities and delayed unreasonably to notify him about the referrals, in violation of the Staff Rules and the Tribunal's jurisprudence. In addition, the Applicant alleges that the Bank improperly released confidential information to the U.S. newspaper. In response, the Bank asserted that its decisions were matters of managerial discretion. The Bank complied with its own guidelines, the requirements of the Staff Rules, and the Tribunal's findings in *C*, Decision No. 272 [2002]. It argued that did not abuse its authority when it decided not to investigate the alleged leak of confidential information.

In considering the case before it, the Tribunal found that the Bank had incorrectly interpreted the Tribunal's guidelines established in *C* [2002], and the provisions of the relevant Staff Rules, and violated these provisions when it failed to notify the Applicant of the content of the referrals to national authorities. The Tribunal opined that a decision to make a referral to national authorities to initiate criminal proceedings against a staff member must be based on a written opinion of the General Counsel of the Bank. The Bank should outline instances when such referrals may be made and the procedures to be followed in doing so. The procedures established should ensure that staff members are provided with information regarding such referrals in a timely manner, as a matter of due process and in compliance with the Staff Rules. Before referrals are made the Bank should consider whether there is sufficient basis for a criminal prosecution in a state of competent jurisdiction.

With respect to the Applicant's contentions that the Bank should have investigated his allegations of a leak, the Tribunal opined that the decision to investigate a leak is a discretionary managerial decision made by INT. However, having regard to the facts of the case, the Tribunal considered that the evidence strongly suggested that the leak could have

originated from INT, in which case the matter should have been referred for an independent investigation to determine the validity of the Applicant's complaint. The Tribunal thus found that the failure to conduct an investigation of the leak of confidential information was a violation of the Bank's rules and could potentially prejudice a staff member's due process rights.

For these reasons, the Tribunal ordered that the Bank provide the Applicant with all documents referred to the criminal authorities to date, since 2003. The Tribunal considered that the monetary compensation awarded by the lower instances was more than adequate compensation given the circumstances of the case. All other claims were dismissed.

3. *Decision No. 399 (1 July 2009): Bonaventure Mbida-Essama* v. *International Bank for Reconstruction and Development*[36]

NOTIFICATION REGARDING RESTORATION OF PRIOR PENSION SERVICE—IN THE CIRCUMSTANCES OF THE CASE, E-MAIL CONSTITUTED A REASONABLE MEANS OF COMMUNICATION—DATE ON WHICH NOTICE IS DEEMED RECEIVED IS NOT THAT IN WHICH THE RECIPIENT OPENS THE E-MAIL NOTICE—DECISION SHOULD NOT BE READ AS A GENERAL STATEMENT THAT THE BANK'S DUTY TO NOTIFY CAN BE DISCHARGED IN ALL CASES BY SIMPLY SENDING AN E-MAIL NOTIFICATION

The Applicant challenged the decision of the Bank's Pension Benefits Administration Committee (PBAC) that his election to restore his prior pension service had to be made within a five-year period which ran from the day the Bank informed him of the restoration opportunity by an e-mail message which he apparently never read.

The Applicant was employed by the Bank on a regular appointment from 1979 until he resigned from the Bank in 1988. At the time, the Applicant was covered by the Staff Retirement Plan pension scheme based on a notional gross remuneration (Gross Plan). When the Applicant resigned from the Bank, he decided to exercise his right under the Plan to take a lump sum withdrawal benefit. The Applicant was rehired by the Bank under a term appointment on 17 July 2000, where he became a participant of the new benefit scheme based on net salary (Net Plan). At this point, the Applicant requested that the Bank restore his past pension service to the Net Plan, but was informed that it was not Bank policy to do so.

In late 2002, the Bank amended its Staff Retirement Plan to allow the option for restoration of past pension service in certain circumstances. In particular, the amended plan provided that if such a participant (like the Applicant) "within five years after the date on which the participant received notice of the restoration opportunity provided under this section and while still a participant" refunds the earlier withdrawal payment, with interest, the participant will be credited with the number of days of service credited to him in the prior period of participation. To this end, the Bank would notify staff members about the restoration opportunity, and the staff member has a five-year restoration period running from the date of notice.

On 6 February 2003 the Bank's Pension Administration sent a notice to the Applicant's Bank e-mail account explaining of his right to restore his past pension service within five years, or by 6 February 2008. The Pension Administration sent a further message on 14 February 2003 providing more details on the restoration option. The Applicant claimed

[36] Jan Paulsson, President, and Judges Sarah Christie and Stephen M. Schwebel.

he only became aware of and saw the 6 February 2003 notice in July 2008, more than five years later. The Bank argued that it sent its restoration notices with a "read receipt" requested, so that it would receive a read receipt by e-mail when a recipient opens a restoration notice, and the receipt would be added to the recipient's pension files. The Bank explains that the read receipt would serve as evidence that the recipient opened the notice, but the five-year restoration period would still commence from the date on which the e-mail notice was transmitted to the participant's e-mail account, regardless of whether or when the message was opened or read.

The Applicant asked the PBAC to extend the deadline for his restoration period. On 23 October 2008, the Committee denied the request for an extension. The Applicant filed his Application before the Tribunal arguing that the five-year time period should run from 31 July 2008.

In considering the case before it, the Tribunal considered whether sending the restoration notice by e-mail in the Applicant's case was reasonable. The Tribunal found that e-mail certainly is a reasonable method of communication in today's workplace, especially in the Bank. The e-mail notices in this case were sent in February 2003. It cannot be disputed that by 2003 e-mail had become a routine and familiar format for intra-office communication in the Bank. In fact, it is not in dispute that the Applicant himself used e-mail as a means of communication on a regular basis in the course of his job responsibilities. Thus, the Tribunal found that sending the restoration notice by e-mail was reasonable in this case.

With respect to the Applicant's contention that the e-mail restoration notice must not be considered received until the recipient opens the e-mail notice, the Tribunal disagreed. The Applicant could not stop the clock running by deciding not to open the e-mail notice or by ignoring it. If his argument were accepted, it would mean he could keep the restoration period open indefinitely by simply deciding not to open the e-mail notice.

It understood that e-mail recipients may ignore or delete messages without opening them when it appears that the messages were unsolicited or where the sender is unknown. But here the Bank sent him an e-mail notice, captioned so as to convey its import, and another personalized and captioned follow-up message a week later. It was obvious to the Applicant that the two e-mail messages were sent from Pension Administration's e-mail account. The Applicant admits that he failed to open the e-mail message or even ignored them because he had lost interest in the restoration matter. The Tribunal concluded that the Bank could not be blamed for this.

The Tribunal thus dismissed the Applicant's claims. It however cautioned that this should not be read as a general statement that the Bank's duty to notify can be discharged in all cases by simply sending an e-mail notification. The Tribunal's holding in this case was tied to its circumstances.

4. *Decision No. 403 (7 October 2009): Shohreh Homayoun* v. *International Bank for Reconstruction and Development*[37]

Effect of national court order within the organization—Venue for claiming spousal support—Failure by staff member to elect withdrawal of pension—

[37] Jan Paulsson, President, and Judges Zia Mody, Stephen M. Schwebel and Francis M. Ssekandi.

RETIREMENT PROVISIONS BECAME PAYABLE ONLY AFTER STAFF MEMBER ELECTED TO RECEIVE THE PENSION—ABSENT ANY RULES APPLICABLE IN THE CASE WHERE A STAFF MEMBER OMITS TO MAKE AN ELECTION, THE TRIBUNAL FOUND NO WARRANT TO IMPOSE AN ELECTION WHERE NONE HAD BEEN MADE—IF A STAFF MEMBER'S OBLIGATIONS TO PROVIDE RETIREMENT BENEFITS TO A FORMER SPOUSE ARE ESTABLISHED AND ORDERED BY A COURT OF COMPETENT JURISDICTION BUT ARE NOT RESPECTED BY HIM, IT IS OPEN TO THE FORMER SPOUSE TO SEEK REDRESS THROUGH THAT COURT

The Applicant challenged a decision of the Pensions Benefits Administration Committee (PBAC) to deny her request for distribution of her former spouse's pension pursuant to the spousal support order issued by a court of the United States. The ground for the denial was that her former spouse (Mr. X) had not commenced a pension under the terms of the Staff Retirement Plan (SRP). In 1995, the Staff Retirement Plan had been amended to permit payments directly from the Plan for the support of divorced or legally separated spouses of retired Plan participants, pursuant to settlement agreements between spouses, or pursuant to a final order of a court in domestic relations proceedings.

The Applicant and Mr. X were married in Iran in 1980. They had two daughters. Mr. X began his employment with the International Finance Corporation (IFC) in December 1985 and became a participant in the Staff Retirement Plan as of that date. His employment with the IFC ended on 3 April 2007. Mr. X was 56 years old at the time and was eligible to withdraw unreduced early retirement pension.

A divorce decree was entered by the Superior Court of the District of Columbia on 25 October 2009 after a separation that began in November 1997. The Applicant subsequently obtained a number of court orders under the laws of the District of Columbia providing for awards of various forms of support. An order of 7 March 2007 determined that the marriage actually ended on 2 February 2006, and awarded the Applicant "50% (fifty percent) of [Mr. X's] pension from the World Bank, if and when paid to him, whether in the form of a lump sum or in the form of periodic payment or both". The Applicant's attorney submitted the orders to the Pension Benefits Administration Division (Pension Administration). The Manager, Pension Administration, informed Mr. X that, according to the orders, Pension Administration would be making spousal support payments to the Applicant, effective upon Mr. X's retirement.

Although Mr. X's employment with IFC indeed terminated on 3 April 2007, Mr. X never took the necessary steps to commence his monthly pension. On 3 June 2008, after waiting for more than a year, the Applicant submitted a request for relief to PBAC. At its meeting of 23 October 2008, PBAC considered and denied the Applicant's request seeing no provision in the SRP under which relief could be granted. PBAC further explained that under the terms of the Plan, Mr. X would need to elect to commence his unreduced early retirement pension, and only then would his pension be "payable".

The Applicant requested the Tribunal to: (i) instruct PBAC to reverse its decision and to order the Plan to pay the Applicant one-half of Mr. X's retirement pension without waiting for him to make an election, or to reach the age at which payments would begin automatically; and (ii) compensate the Applicant in the amount of pension foregone. The Applicant's contented that ever since Mr. X's employment with IFC ended he has failed to take proper steps to protect his family, and expressed anxiety that he might be deported and would thus be beyond the reach of the courts of the District of Columbia. Therefore

she urged that her share of Mr. X's pension be paid now, even without his submitting an application for withdrawal of pension.

In considering the case before it, the Tribunal examined whether PBAC correctly interpreted the applicable law and properly concluded that the conditions for granting the Applicant the requested benefits were not met. The Tribunal noted that amounts accessible under the SRP's early retirement provisions became payable only after four conditions were satisfied. Mr. X had fulfilled all conditions but the fourth: he had not elected to receive the unreduced pension. His pension was thus not payable. The Tribunal noted that the Bank may not have considered the possibility that staff members might omit to make an election, and noted that the Bank could amend its rules to cover such an eventuality. In the meantime, given the wording of the applicable rules, the Tribunal found no warrant to impose an election where none had been made. Thus, the PBAC did not contravene the terms of the Staff Retirement Plan by declining to pay out a portion of Mr. X's pension to the Applicant.

The Tribunal noted however, that if an SRP participant's obligations to provide certain retirement benefits to a former spouse are established and ordered by a court of competent jurisdiction but are not respected by the participant (potentially resulting in economic loss), it is open to the former spouse to seek redress through that court. Thus it was for the Applicant to seek a further order from the Superior Court of the District of Columbia should she wish to vindicate her position.

For these reasons, the Tribunal dismissed the Applicant's claims.

5. *Decision No. 424 (9 December 2009): Farah Aleem* & *Irfan Aleem* v. *International Bank for Reconstruction and Development*[38]

Effect of national court orders on the organization—Conflicting divorce orders by judicial authorities of two countries—Dispute to be resolved applying rules and policies of the Staff Retirement Plan—Amendment made to Staff Retirement Plan to protect interest of former spouses of staff members and to prevent staff members from evading domestic court orders—No legal basis for Applicant to avoid order from court in the host country

Mr. Aleem joined the Bank in 1985 and retired in 2004. Mr. and Ms. Aleem are citizens of Pakistan and were married in that country in 1980 under the laws of Pakistan. On 3 March 2003, Ms. Aleem filed a "Complaint for Limited Divorce, Custody, Support, Use and Possession and Other Relief" with the Circuit Court for Montgomery County, Maryland. Mr. Aleem filed his "Answer to Complaint" on 1 May 2003 requesting *inter alia* that the Circuit Court "[g]rant [Ms. Farah Aleem] a limited divorce on the basis of voluntary separation without cohabitation and no reasonable expectation of reconciliation". While the Maryland proceedings were in progress, Mr. Aleem went to the Pakistani Embassy in Washington, DC, where he signed a document he prepared titled "Divorce Deed" which recalled that a sum of Rs. 150,000 (equivalent to about USD 2,500) was fixed as consideration of the marriage contract, which would be paid by the husband if the marriage were dissolved. Mr. Aleem sent the Divorce Deed and the check to Ms. Aleem on 23 July 2003.

[38] Jan Paulsson, President, and Judges Florentino P. Feliciano, Stephen M. Schwebel, Francis M. Ssekandi, and Ahmed El-Kosheri.

In September 2003, Mr. Aleem went to Pakistan and filed an application with the Arbitration Council in Karachi for official confirmation of the divorce. The Arbitration Council sent notices to both Mr. Aleem and Ms. Aleem inviting them to appear in person before the Council "for confirmation of Divorce along with original Documents". Ms. Aleem wrote to the Arbitration Council requesting that Mr. Aleem's application be denied since there was a previously filed action in the jurisdiction of Maryland in which both Mr. and Ms. Aleem reside, the jurisdiction in which they jointly owned real property, and the jurisdiction in which both of their children had been born and raised. The Arbitration Council reiterated that the purpose of the notices were to ascertain whether both parties wish to reconcile. In the absence of information from Ms. Aleem, and in view of Mr. Aleem's confirmation that he did not wish to reconcile, the Arbitration Council sent a letter entitled "Confirmation of Divorce" to both Mr. and Ms. Aleem noting that "no reconciliation took place . . . the divorce is confirmed . . . on the day 26 February, 2004."

In Maryland, the divorce proceedings continued and both Mr. Aleem and Mr. Aleem filed numerous motions. On 5 April 2004, Mr. Aleem filed with the Circuit Court a Motion to Dismiss the Maryland proceedings because "the Pakistani authorities have already decided the issues of property divorce and property distribution." After a hearing, the Circuit Court dismissed Mr. Aleem's motion in May 2004. On 27 June 2006, the Circuit Court granted an absolute divorce. It also issued an order for spousal support requiring Mr. Aleem to pay his former wife, until the death of either party, 50% of his monthly benefit from the Bank's Staff Retirement Plan.

Mr. Aleem appealed to the Court of Special Appeals of Maryland arguing that the Circuit Court erred in its decision not to "give comity to Pakistani law under which his divorce by *talaq* did not include any equitable division of marital property titled in his name". In September 2007, the Court of Special Appeals denied his appeal. Mr. Aleem appealed to the highest court of the state which, on 6 May 2007, also dismissed his appeal.

On 13 May 2008 Ms. Aleem's attorney notified Pension Administration of the ruling of the Maryland Court of Appeals and requested payment to Ms. Aleem pursuant to the Order of the Circuit Court. Mr. Aleem objected, stating that he would contest the matter through the Bank's grievance system. Pension Administration then decided to suspend the disputed portion of the pension effective May 2008. The dispute was then referred to the Pension Benefits Administration Committee (PBAC), which decided to continue the suspension of the disputed portion of the pension until the matter was resolved by mutual agreement or by the Tribunal.

In considering the merits, the Tribunal concluded that the dispute must be resolved under the Staff Retirement Plan (SRP) applying the rules and policies contained therein. The Tribunal found that there is no need for the Tribunal to pronounce upon the validity of the Maryland and Pakistani divorce decrees or to assess their relative merits.

The Tribunal recalled that the SRP was amended in 1995 to ensure that Bank Group retirees comply with their family legal obligations in retirement. Previously, former spouses had no legal ability to recover portions of a Bank Group retiree's pension if the retiree left the jurisdiction or otherwise refused to pay the former spouse directly, whether voluntarily or following a valid court order. Thus the policy rationale behind this amendment to the SRP was clearly to protect the interests and welfare of the retired staff members' former spouses. The amendment was enacted to prevent staff members from evading domestic

court orders using the legal loopholes that existed prior to the amendment. The Tribunal thus sought to address what would be the proper solution given the context and policy rationale of the relevant provision of the SRP.

The Tribunal found that there was no legal basis for Mr. Aleem to evade the Maryland Order. He voluntarily submitted to the jurisdiction of the Maryland Circuit Court. The Tribunal noted that, even after the unilateral divorce under the Pakistani laws, he applied to the Maryland Circuit Court for a dismissal of the ongoing proceedings on ground of his Pakistani divorce. The Maryland Circuit Court refused to grant comity to the Pakistani divorce and his challenge to the highest court of Maryland failed. Thus, the Maryland Circuit Court Order was final and he was bound by that Order. Pension Administration and the Tribunal are not the right fora to challenge the decision of the highest court in a jurisdiction where both parties lived for over 20 years and made their home.

The Tribunal was unconvinced by Mr. Aleem's arguments that he was living in Maryland under diplomatic visas on grounds of his employment with the Bank, and that accordingly Pakistani law should govern their marriage and terms of their divorce. Mr. Aleem was neither a diplomat under international law nor under the Bank's Articles of Agreement. He was not immune from U.S. court orders relating to his marital obligations.

The Tribunal thus decided that the Bank must give effect to the Maryland Order and release the undisputed portion of Mr. Aleem's monthly pension including the amount already suspended to his former spouse.

F. Decisions of the Administrative Tribunal of the International Monetary Fund[39]

Judgement No. 2009–1 (17 March 2009) *Mr. S. Ding, Applicant* v. *International Monetary Fund* (IMF)*, Respondent*[40]

Inadmissibility of an application challenging a regulatory decision pre-dating the entry into force of the Tribunal's statute—Comparison of the text of the pre-existing rule and that of the rule currently administered by the Fund—Invitation to the Fund to reconsider the policy on education allowance for children with birthdays falling within and outside the academic year

The Applicant, a staff member of the Fund, challenged elements of the Fund's policy governing eligibility for education allowances and their application in his individual case. The Applicant contended that the policy impermissibly discriminated in the case of a child, such as his own, whose birthday falls outside of the academic year. In such circumstance, asserted Applicant, the policy provided, in total, one less year of eligibility for education

[39] The Administrative Tribunal of the International Monetary Fund became operational on 1 January 1994. The Tribunal is competent to pass judgment upon any application: a) by a member of the staff challenging the legality of an administrative act adversely affecting him; or b) by an enrolee 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.

[40] Stephen M. Schwebel, President; Nisuke Ando and Michel Gentot, Judges.

allowances than in the case of a child whose birthday falls within the academic year. Applicant sought as relief the establishment of his child's eligibility for education allowances for the 2008–2009 academic year and suggested revision of the Fund's policy to provide an equal number of years of eligibility for education allowances, irrespective of whether the child's birthday falls within or outside of the academic year.

The contested provision of General Administrative Order (GAO) No. 21, Rev. 7 (June 12, 2000), provides as follows:

> 4.02.1 *Children With Birthdays Falling Within the Academic Year.* A child whose birthday falls within the academic year shall qualify for education allowances beginning with the academic year during which the child's fifth birthday occurs until the end of the academic year during which the child's twenty-fourth birthday occurs.
>
> 4.02.2 *Children With Birthdays Falling Outside the Academic Year.* A child whose birthday falls outside the academic year shall qualify for education allowances beginning with the academic year that follows the child's fifth birthday until the end of the academic year that precedes the child's twenty-fourth birthday.

The Fund contended that the application was inadmissible on the ground that the contested regulation pre-dated the entry into force of the Tribunal's Statute, and relied in this regard on article XX, section 1, of the Statute which provides:

> The Tribunal shall not be competent to pass judgment upon any application challenging the legality or asserting the illegality of an administrative act taken before October 15, 1992, even if the channels of administrative review concerning that act have been exhausted only after that date.

The Tribunal noted that article VI, section 2, of the Statute provides that an applicant may challenge a "regulatory" decision of the Fund either directly within three months of its announcement or effective date, or at any time as part of a challenge to an admissible "individual" decision taken pursuant to such "regulatory" decision. It was not disputed that the Applicant had filed his application within three months of the exhaustion of administrative review of the "individual" decision denying his request for education benefits for the 2008–2009 academic year. The general proviso of article VI, section 2, is, however, subject to the *lex specialis* of article XX. Accordingly, the question for decision by the Tribunal was whether the "regulatory" decision challenged by the Applicant had been taken before October 15, 1992.

In the view of the Fund, the Applicant was challenging a rule initially adopted in 1979. The 2000 revision of general administrative order (GAO) No. 21, maintained the Fund, represented a clarification, but not a substantive change, in the regulation. Applicant, for his part, maintained that because the rule that had pre-dated the Tribunal's competence had not expressly addressed the matter of eligibility of children with birthdays falling outside the academic year, the 2000 revision had introduced a new element in the eligibility criteria.

In order to assess the admissibility of the Application, the Tribunal initially compared the text of the pre-existing rule, which pre-dated the entry into force of the Tribunal's Statute, with the text of the rule currently administered by the Fund, which had given rise to Applicant's complaint. The Tribunal noted that the texts of the two rules differed in form. While the current rule (Revision 7 of GAO No. 21, adopted in 2000) differentiated explicitly between children whose birthdays fall within the academic year and those

with birthdays outside of the academic year, the prior version (Revision 6 of GAO No. 21, adopted in 1985) had made no such differentiation on the face of the regulation.

The Tribunal examined the history of the Fund's regulations governing age eligibility for education allowances and concluded that "in substance and in effect" the two regulations were the same: "Both only permit payment of education allowance benefits to a child who reaches his or her 5th birthday during the academic year. Both cut off payment of the education allowance at the end of the academic year in which the 24th birthday is reached." (para. 48.). As the provisions were the same in substance, ". . . . Mr. Ding's Application is tantamount to a challenge to a rule of the Fund that pre-dates the entry into force of the Tribunal's Statute." (*Id.*) Hence, by reason of the terms of article XX, paragraph 1, of the Tribunal's Statute, the Tribunal concluded that it was without jurisdiction to pass upon the merits of the Application.

Accordingly, the Application of Mr. Ding was denied.

Nonetheless, the Tribunal concluded its Judgment with the following observation:

"49. . . . the Tribunal is constrained to observe that the effect of the wording of the provisions in question is not clear on their face insofar as they bear on the number of years that a child of a staff member is entitled to the Education Allowance. They do not expressly state that children born outside the academic year will be entitled to the benefit of 19 years of the education allowance while those born within will be entitled to 20. Rather, staff are left to draw this implausible conclusion by their own calculation. As the Fund's pleadings confirm, these provisions result, or can result, in a child of a long-serving staff member receiving either 19 or 20 years of education allowance benefits, depending on whether the child is born during or outside of the academic year. The resultant inequality—whether intended or not—invites the reconsideration of the Fund."

Chapter VI

SELECTED LEGAL OPINIONS OF THE SECRETARIATS OF THE UNITED NATIONS AND RELATED INTERGOVERNMENTAL ORGANIZATIONS*

A. Legal opinions of the Secretariat of the United Nations

(Issued or prepared by the Office of Legal Affairs)

1. Privileges and immunities

(*a*) Note to the Assistant Secretary-General for Central Support Services, regarding request for a conference call with the Senate Committee on Homeland Security and Governmental Affairs

Long-standing policy of Organization not to provide formal testimony in parliamentary or congressional hearings—Informal briefings on specific, defined areas are allowed when considered in the best interest of both the Organization and the Member State—Single audit principle precludes any review by external, including Governmental, authority—External review, audit, inspection, monitoring, evaluation or investigation can only be conducted by bodies mandated by the General Assembly—Approval by Secretary-General to be sought prior to engaging in informal briefing—Information provided to be of technical nature and exclude any information on managerial practices

1. This is in response to your [date] email seeking guidance on how to respond to an email of the same date from [Name 1], Counsel, Senate Committee on Homeland Security and Governmental Affairs, requesting a conference call with the Under-Secretary-General for Management "to speak with the Committee about [Name 2]" and "the [Company] sole-source contract." I understand that [Name 1]'s request was forwarded to you due to your involvement with the contract in question.

Formal and informal testimony before Senate or Congressional hearings

2. It is not clear at this stage whether the request from the Senate Committee is for formal testimony from a United Nations official or informal information only. As you may know, the long-standing policy of the Organization in relation to invitations to give testimony before national parliamentary or congressional hearings is contained in the Secretary-General's memorandum of 8 August 1991 (copy attached).** You will note from

* This chapter contains legal opinions and other similar legal memoranda and documents.

** Not reproduced herein.

that memorandum, which has been consistently applied to date, that it has not been the practice for Secretariat officials to provide formal testimony in such hearings except, on the rarest occasions, on matters of a purely technical nature and with the authorization of the Secretary-General.

3. Should the request not be for formal testimony, however, but for the provision of informal information only, the Organization's practice has been to allow informal briefings on specific, defined areas where it is considered to be both in the interests of the Organization and the Member State concerned.

Single audit principle

4. Whether in a formal or an informal setting, the nature of the information sought should be consistent with the "single audit" principle. Under that principle, any review by any external authority, including any Governmental authority, is precluded under regulation 7.6 of the Financial Regulations and Rules, which provides that "the Board of Auditors shall be completely independent and solely responsible for the conduct of audit." This principle was reaffirmed by the General Assembly in its resolution 59/272, which underscored the principle that any external review, audit, inspection, monitoring, evaluation or investigation can only be conducted by bodies mandated by the General Assembly. Consequently, to the extent that the information sought may be considered a review of managerial practices, whether by [Name 2] or other officials in the United Nations, the release of that information would be precluded under the "single audit" principle followed by the Organization.

Authorization by the Secretary-General

5. Although it is not clear whether the request for a United Nations official to participate in a conference call with the Senate Committee is on a formal or an informal basis, we would advise that any participation in a conference call with "the Committee" would require the approval of the Secretary-General on an exceptional basis. Further, should such approval be provided, the participation should be limited to information of a technical nature and exclude information that may be considered a review of managerial practices, whether by [Name 2] or other United Nations officials.

Privileges and immunities

6. As a final comment, the Organization would not ordinarily respond to requests of this nature unless they are made formally via the United States Mission. This is particularly important where, as in the present case, the request would impact on the privileges and immunities of the United Nations and its officials providing the requested information. Therefore, we would suggest that you respond to [Name 1] along the lines in the attached draft* requesting a more detailed letter of request be forwarded through the United States Mission. Should this elicit a formal, detailed letter of request through the United States Mission, we stand ready to advise further.

9 March 2009

* Not reproduced herein.

(*b*) Interoffice memorandum to the Director, Legal Support Office, United Nations Development Programme (UNDP), regarding privileges and immunities issues related to "Delivery as One" and United Nations Volunteers

"One UN" initiative to provide coordinated development assistance—Proposal to Governments to apply the Standard Basic Assistance Agreement (SBAA) *mutatis mutandis* to all organizations in the United Nations system participating in the One UN initiative—Status of United Nations volunteers—Volunteers engage under substantially equal terms and often serve under similar conditions as technical assistance experts but are not officials of the United Nations nor experts on mission—*Reparation for Injuries Suffered in the Service of the United Nations* case defines "agents" of the Organization in "the most liberal way" and does not address the question of privileges and immunities—Privileges and immunities of United Nations volunteers not considered to have become customary law

1. This is with reference to your emails concerning the extension of privileges and immunities enjoyed by UNDP under the Standard Basic Assistance Agreement (hereinafter SBAA) to other United Nations system organizations in the countries identified for the "Delivery as One" pilot as well as clarification on the privileges and immunities enjoyed by United Nations Volunteers.

Delivery as One /One UN

2. We understand that there is a proposal to conclude agreements, by way of an exchange of letters, extending the SBAA to all United Nations system organizations participating in the "Delivery as One" or the "One UN" pilots. More specifically, a United Nations letter would be sent to the Governments of the eight countries in which the One UN pilot is being implemented proposing to apply the SBAA *mutatis mutandis* to all United Nations system organizations participating in the One UN initiative and in particular, to accord the privileges, immunities and facilities enjoyed by UNDP, its personnel, property and assets under the SBAA to the other organizations and their personnel, property and assets.

3. We note that the One UN initiative was launched in 2007, based on a recommendation by the High-Level Panel on United Nations System-wide Coherence, to respond to challenges of a changing world and test how the United Nations family can provide development assistance in a more coordinated way. We also note that the Governments of the eight countries in which the pilot is taking place have agreed to work with the United Nations system to capitalize on the strengths and comparative advantages of the different members of the United Nations family. The One UN will operate under one leader, one budget, one programme and one office. The United Nations system organizations participating in the One UN varies from country to country and comprises United Nations Funds and Programmes; United Nations Specialized Agencies such as the International Labour Organization (ILO), the Food and Agricultural Organization of the United Nations (FAO), the United Nations Educational, Scientific and Cultural Organization (UNESCO); as well as the Joint United Nations Programme on HIV/AIDS (UNAIDS) which is administered by the World Health Organization (WHO).

4. Under the circumstances, we have no objection to concluding an agreement by way of an exchange of letters extending the applicability of the SBAA to all the United

Nations system organizations participating in the One UN. Once a draft letter has been prepared, please send it to the Office of Legal Affairs (OLA) for review.

Privileges and Immunities of United Nations Volunteers

5. Further to our memoranda of 28 February, 25 July[*] and 18 December 2007 on this matter, we note that the United Nations Volunteers Programme holds the view, in accordance with a legal opinion obtained from Professor [Name], that United Nations volunteers may be considered as United Nations officials or experts on mission. Thus, such individuals would enjoy privileges and immunities under the 1946 Convention on the Privileges and Immunities of the United Nations[**] (the General Convention) and that article IX, paragraph 4 (a), of the SBAA which grants to United Nations volunteers the same privileges and immunities as officials should be regarded as a declaratory act. Alternatively, they may be regarded as "agents" in the context referred to by the International Court of Justice (ICJ) in its Advisory Opinion of 11 April 1949 *Reparation for Injuries Suffered in the Service of the United Nations* (hereinafter the *Reparation* case). In Professor [Name]'s view, this would entitle United Nations volunteers to the same functional immunities as those laid down in the General Convention for United Nations officials and experts on mission. In addition, all United Nations volunteers enjoy privileges and immunities under the SBAA as "persons performing services on behalf of the UNDP" regardless of whom they perform work for. Lastly, Professor [Name] has put forward an argument that the uniformity of various SBAAs endowing United Nations volunteers with privileges and immunities indicates that certain standards may have evolved into general rules of customary international law.

6. As we have previously stated, including in the legal opinion published in the United Nations Juridical Yearbook of 1991,[***] while United Nations volunteers engage under substantially equal terms and often serve under similar conditions as technical assistance experts, they do not, strictly speaking, fall into the categories of persons granted privileges and immunities under the General Convention, in the sense of officials or experts on mission. We recall, in relation to the category of officials covered by the General Convention, that article V, section 17, provides that "[t]he Secretary-General will specify the category of officials to which the provision of this article and article VII shall apply. He shall submit these categories to the General Assembly." Pursuant to section 17, the Secretary-General proposed and the General Assembly approved in its resolution 76 (I) of 7 December 1946, "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 the hourly rate." Therefore, all staff members of the United Nations, regardless of nationality, residence, place of recruitment or rank, are considered as officials with the exception of those who are both recruited locally and assigned to hourly rates. In addition, the Secretary-General has also proposed other "officials" other than staff members of the United Nations, including presiding officers of United Nations organs performing func-

---

[*] For the text of the memorandum, see *United Nations Juridical Yearbook, 2007* (United Nations Publication, Sales No. E.10.V.1 (ISBN 978–92–1-133681–8)), chapter VI, p. 404.

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

[***] *United Nations Juridical Yearbook 1991*, (United Nations Publications, Sales No. E.95.V.19 (ISBN 92–1-133499–3)), chapter VI, p. 305.

tions of the Organization on a full-time basis. Those officials' names are submitted to the relevant host country together with those of Secretariat officials who are staff members in accordance with section 17 of the General Convention. Accordingly, we are of the view that United Nations volunteers cannot be considered as officials of the United Nations.

7. With regard to the category of experts on mission, the Secretary-General's bulletin* ST/SGB/2002/9 of 18 June 2002 on Regulations Governing the Status, Basic Rights and Duties of Officials other than Secretariat Officials, and Experts on Mission, in its introduction provides an explanation on who may be considered as experts on mission. Paragraph 5 states that "[e]xperts on mission may be retained by way of a contract known as a consultant contract, which sets out the terms of their appointment and the tasks that they must discharge. Other individuals may have the status of experts on mission, even though they do not sign a consultant contract, if they are designated by United Nations organs to carry out missions or functions for the United Nations (for example, rapporteurs of the Commission on Human Rights, rapporteurs and members of its Subcommission on the Promotion and Protection of Human Rights and members of the International Law Commission)." United Nations volunteers have not been considered to fall within the category of experts on mission for the United Nations.

8. Nevertheless, as previously advised, international United Nations volunteers enjoy, pursuant to the SBAA, the same privileges and immunities as United Nations officials as they fall within the category of "persons performing services on behalf of UNDP." In this regard, article I (1) of the SBAA provides the scope of application of the Agreement which provides that "[i]t shall apply to all such UNDP assistance and to such Project Documents or other instruments . . . as the Parties may conclude to define the particulars of such assistance and the respective responsibilities of the Parties and the Executing Agency hereunder in more general detail in regard to such projects."

9. With regard to the proposal that United Nations volunteers be considered as "agents" in the context of the *Reparation* Case, we note that the ICJ defined agents "in the most liberal way, that is to say, any person who, whether a paid official or not, and whether permanently employed or not, has been charged by an organ of the Organization with carrying out, or helping to carry out, one of its functions—in short, any person through whom it acts." As the case did not pertain to privileges and immunities, the ICJ did not stipulate what privileges and immunities "agents" enjoyed. Moreover, the General Convention and other legal documents which confer privileges and immunities do not refer specifically to "agents." Nevertheless, agents, who are not officials or experts on mission, may still be covered by paragraph 1, Article 105 of the Charter of the United Nations 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 fulfillment of its purposes." However, this is a very general clause and it would not be advisable to depend on this for the privileges and immunities of United Nations volunteers.

10. On the question whether the privileges and immunities of United Nations volunteers have developed into general rules of customary international law binding upon all States, we recall that the ICJ, in its Judgment on the *North Sea Continental Shelf* cases of 20 February 1969, noted that, in order to be considered a new rule of customary international

* For information on Secretary-General's bulletins, see note under section 1 of chapter V A, above.

law, the provision concerned should have induced State practice that was "both extensive and virtually uniform" in such a way as to show "a general recognition that a rule of law or legal obligation is involved." Further, the acts concerned must be such "as to be evidence of a belief that this practice is rendered obligatory by the existence of a rule requiring it." In our view, privileges and immunities enjoyed by United Nations volunteers have not become customary law particularly as there is no uniformity in how they are applied. Furthermore, privileges and immunities are accorded to individuals by host Governments and it is doubtful that all Member States hosting United Nations volunteers would agree that United Nations volunteers enjoyed privileges and immunities as a matter of customary law.

11. As per our previous advice, we maintain the view that the best way to proceed is to conclude agreements by way of an exchange of letters clarifying that all United Nations volunteers enjoy privileges and immunities in a particular country through the extension of the SBAA. In this regard, the conclusion of such agreements should not be regarded as a "reinterpretation" of the SBAA. To the contrary, the agreement acknowledges that the SBAA does not apply to the situation and requires a separate agreement specifically extending the scope of the SBAA to United Nations volunteers in such cases. Furthermore, we note that similar agreements to extend the SBAA will be concluded within the context of the One UN initiative, as noted above.

12. Lastly, in order to ensure proper coverage for national United Nations volunteers, who do not enjoy any privileges and immunities under the SBAA, the United Nations Volunteers Programme may wish to consider including in the proposed exchange of letters, privileges and immunities for national United Nations Volunteers as well.

15 December 2009

2. Procedural and institutional issues

(*a*) Note to the Under-Secretary-General for Internal Oversight Services regarding oversight authority over the United Nations Staff Union

Question of oversight authority of the Office of Internal Oversight (OIOS) over the United Nations Staff Union—Mandate of OIOS covers use of resources and staff of the Organization, and breaches of the Organization's rules, regulation and administrative issuances—Mandate covers staff representatives to the extent that they perform official functions of the Organization—OIOS should to every extent possible refrain from involvement in the internal operations and disputes within the Staff Union—Staff Union Statute provides mechanisms for settlement of internal disputes

1. I refer to your note dated 5 February 2009, copied to the Under-Secretary-General for Management, regarding the above matter. We understand that your note arises from a complaint contained in an email of [date], copied to you, from a staff representative of the United Nations Staff Joint Pension Fund, regarding alleged irregularities in the election process for the New York Staff Union. Within the context of the operational independence afforded to the Office of Internal Oversight (OIOS), pursuant to General Assembly resolution 48/281B, you seek the assistance of the Office of Legal Affairs (OLA) "in determining the OIOS oversight authority over the Staff Union."

2. In general, the mandate of OIOS pursuant to resolution 48/218B covers the use of the resources and staff of the Organization (paragraph 5 (c)) and breaches of the Organization's rules, regulations and relevant administrative issuances (paragraph 5 (c) (iv)). To the extent, therefore, that staff representatives are performing official functions of the Organization pursuant to staff rule 108.1, "Staff representative bodies," and ST/AI/293, "Facilities to be provided to Staff Representatives," the mandate of OIOS would extend over Staff Representatives performing such functions, just as it would over any other staff members performing their official functions.

3. We would note, however, that this matter involves an internal dispute regarding the alleged disenfranchisement of members of the United Nations Joint Staff Pension Fund in the Staff Union election, and as such, relates to internal processes of the Staff Union, rather than the use of United Nations resources or the application of the Staff Regulations and Rules. We consider that the Administration, including OIOS, should to every extent possible, refrain from involvement in the internal operations and disputes within the Staff Union. Accordingly, we consider that the matter should be dealt with through internal mechanisms under the Staff Union's Statute, which are designed to handle disputes of this nature, without the involvement of OIOS.

23 February 2009

(*b*) Note regarding the borrowing authority of the United Nations Development Programme (UNDP)

Under the Charter of the United Nations and the Financial Regulations, borrowing of money must have prior approval of the General Assembly, and any such borrowing must be effected under the terms and conditions established by the General Assembly

[. . .]

2. This Office has consistently advised that, pursuant to the Charter of the United Nations and the United Nations Financial Regulations, borrowing cannot be carried out without the prior approval of the General Assembly, and any such borrowing must be effected under the terms and conditions established by the General Assembly. Based on the information available in our files, I understand that, in fact, borrowing has always been carried out pursuant to express authorization of the General Assembly. For example, in respect of the borrowing authority of the UNDP Administrator, I refer to General Assembly resolution 31/165 of 21 December 1976 (copy attached),* by which the General Assembly authorized limited borrowing for the purpose of meeting short-term cash requirements for UNDP projects. In that resolution, the General Assembly authorized the UNDP Governing Council to grant to the UNDP Administrator the authority to borrow money until the end of 1977 and on a case-by-case basis. The General Assembly stipulated that, in order to borrow, the Administrator had to seek the prior approval of the Governing Council in each case, and the sources of the borrowing were limited to "voluntary-funded trust funds of organizations within the United Nations." In view of the foregoing, the prior approval of the General Assembly is required in order for UNDP to engage in borrowing.

* Not reproduced herein.

[. . .]

6 March 2009

(*c*) Note to the Under-Secretary-General, Department of General Assembly Affairs and Conference Management concerning the request by [State] for a supplementary item to be included in the agenda of the sixty-fourth session of the General Assembly

Request of Member State for inclusion of item in the agenda of the General Assembly pursuant to rule 14 of Rules of Procedure—The Secretariat does not interfere with a Member State's sovereign right to circulate document provided that it is not blatantly inflammatory or potentially libelous—Strong criticism of another Member State or United Nations staff member does not justify refusal to circulate document—Call for another Member State's dissolution constitutes direct attack against its sovereignty and territorial integrity in violation of the principles of the charter—Secretariat should not circulate document containing blatantly inflammatory and defamatory language against another Member State

1. This is in reference to your note dated 14 August 2009 to the Chef de Cabinet, copied to the Legal Counsel, to which a letter dated 4 August 2009 from the Permanent Representative of [State 1] to the United Nations and addressed to the Secretary-General was attached. In his letter, the Permanent Representative requests that a supplementary item be included in the agenda of the sixty-fourth session of the General Assembly and that his letter and its explanatory memorandum be circulated as documents of the General Assembly.

2. Pursuant to rule 14 of the Rules of Procedure of the General Assembly, "Any Member or principal organ of the United Nations or the Secretary-General may, at least thirty days before the date fixed for the opening of a regular session, request the inclusion of supplementary items in the agenda. Such items shall be placed on a supplementary list, which shall be communicated to Members at least twenty days before the opening of the session."

3. The letter from the Permanent Representative of [State 1] by which his Government requests a supplementary agenda item states, *inter alia*, that, "The [State 2] entity is essentially a mafia for money-laundering and the financing of wars and terrorism that is exempt from international law." Furthermore, the letter calls for the dissolution of [State 2] by stating that, "The . . . part [of State 2] should join [State 3], the . . . part should join [State 4] and the . . . and . . . parts should join [State 5]."

4. As far as this request is concerned, this Office has consistently maintained that Member States have the right to circulate any document they deem appropriate, including when requesting a supplementary agenda item. The Secretariat does not interfere with this sovereign right provided that the document is submitted by a duly accredited representative, that it does not exceed the page limitations established by the General Assembly and that it is not blatantly inflammatory or potentially libelous. The fact that a document contains a strong criticism of another Member State or a United Nations staff member does not justify the Secretariat's refusal to circulate the document. However, should a document contain potentially libelous, protected or confidential material or language, then this would provide a legitimate basis to approach the Member State that has sought the

circulation of the document with a request that it be withdrawn or revised in order to omit such material/language.

5. Thus, we recommended in the attached note* dated 27 March 2000, when advising on a request by the Permanent Mission of [State 6] for circulation of an official document at the fifty-sixth session of the Commission on Human Rights, that the Permanent Mission should be requested to re-submit its document without reference to confidential and internal OHCHR communications and should also be asked to remove references to the name of a particular OHCHR staff member in order to avoid a potentially libelous situation. We also advised that should the Permanent Mission refuse, the document could be circulated as requested but that OHCHR would be entitled to circulate its own document that presented its comments on the [State 6] document.

6. In the case of the [State 1] request, however, the content and defamatory language of the letter and its explanatory memorandum make it impossible for the Secretariat to circulate it as submitted.

7. Thus, the Permanent Representative should be informed that his letter and its explanatory memorandum contain blatantly inflammatory and defamatory language against another Member State. Furthermore, by calling for [State 2]'s dissolution, [State 1] is directly attacking that Member State's sovereignty and territorial integrity in violation of the principles of the Charter. Consequently, the Secretariat should not circulate the letter and explanatory memorandum as an official document of the 64th session for purposes of requesting a supplementary agenda item.

8. In a meeting which took place yesterday between the Chef de Cabinet and the Permanent Representative [of State 1] . . . , the Chef de Cabinet informed the Permanent Representative of the Secretariat's position along the lines of this note, and offered him the option of withdrawing the letter or drastically revising it in both content and style. The Permanent Representative agreed to relay the Secretariat's concerns to [his capital] and revert, and suggested that the problem between [State 1] and [State 2] might eventually be resolved bilaterally between the two States. It was agreed in the meeting that, in the meantime, no further action would be required.

21 August 2009

(*d*) Interoffice memorandum to the Assistant Secretary-General for Disaster Risk Reduction concerning a draft agreement with the Government of [State]

Conclusion of agreement by way of applying *mutatis mutandis* previously concluded agreement—Authority of Secretary-General to sign agreements on behalf of the organization has been delegated to Under Secretary-Generals within their respective mandates—United Nations International Strategy for Disaster Reduction (UNISDR) falls under authority of the Office for the Coordination of Humanitarian Affairs (OCHA)—Within discretion of Secretary-General to delegate further the authority to sign for the Organization—Otherwise requests for full powers from the Secretary-General must be made on a case-by-case basis

* Not reproduced herein.

1. This is with reference to an email from your Office by which was submitted a revised draft Agreement with the Government of [State] based on the discussions held with this Office.

2. We understand that the Government responded to the draft Agreement that had been cleared by this Office earlier this year stating that it was too lengthy. Accordingly, it is the view of the United Nations International Strategy for Disaster Reduction (UNISDR) that the Government may be more susceptible to concluding an agreement by way of an exchange of letters applying *mutatis mutandis* the 2006 Agreement between the United Nations and the Government of [State].

3. Please find attached* a marked-up text of the draft Agreement. In this regard, the United Nations Development Programme (UNDP), which is also negotiating a draft Office Agreement with the Government of [State], is very close to agreement on the text. The UNDP text is based on the 2006 Agreement as well and we hope that the Government would be amenable to concluding an Agreement in the manner proposed.

4. With regard to the question as to whether full powers can be obtained from the Secretary-General for you to sign all agreements pertaining to the activities of UNISDR, we recall that the Secretary-General of the United Nations, as the chief administrative officer of the Organization, has the authority to sign agreements on behalf of the United Nations. Such authority has been delegated for example to Under-Secretary-Generals who are Department Heads. Such Under-Secretary-Generals have delegated authority to sign agreements without obtaining in each case a formal instrument of full powers from the Secretary-General where such agreements concern exclusively their respective mandates and do not have implications for the Organization as a whole so long as the necessary internal approval processes have been fulfilled. As we had advised in our note dated 23 January 2009 (copy attached),* the UNISDR secretariat falls under the authority of the Office for the Coordination of Humanitarian Affairs (OCHA). Thus, it would ordinarily be [the Under-Secretary-General for Humanitarian Affairs and Emergency Relief Coordinator] who would sign the Agreement on behalf of the United Nations. However, it is within the discretion of the Secretary-General as to whether he wishes to delegate this authority further, to enable you to sign on behalf of the United Nations. Notwithstanding such delegated authority, agreements to be concluded by the United Nations should continue to be sent to the Office of Legal Affairs (OLA) for review and clearance.

5. Otherwise, requests for full powers from the Secretary-General, which are usually processed through this Office since the text requires prior OLA clearance, must be made on a case-by-case basis.

6. Please be advised that the clearance of the Controller is required in respect of the provisions of the draft Agreement which have financial implications for the United Nations.

29 September 2009

* Not reproduced herein.

(*e*) Interoffice memorandum to the Under-Secretary-General for Internal Oversight Offices and the Director of the Ethics Office regarding investigations conducted pursuant to the Secretary-General's Bulletin "Protection against retaliation for reporting misconduct and for cooperating with duly authorized audits investigations" (ST/SGB/2005/21)

Operational independence of the Office of Internal Oversight (OIOS)—Hierarchy of norms—General Assembly resolutions take precedence over administrative issuances—OIOS may take a decision not to investigate a case referred to it by the Ethics Office—Section 2.2 of ST/SGB/2005/21 establishes burden of proof, not a secondary basis of referral of a case from the Ethics Office to OIOS

1. I refer to the memorandum of 23 March 2009 from the Under-Secretary-General for Internal Oversight, as well as to the memorandum of 27 March 2009 from the Director of the Ethics Office, seeking the advice of the Office of Legal Affairs (OLA) on cases referred by the Ethics Office to the Office for Internal Oversight Services (OIOS) for investigation, pursuant to Secretary-General's Bulletin* ST/SGB/2005/21 on "Protection against retaliation for reporting misconduct and for cooperating with duly authorized audits or investigations."

A. Background and brief summary of the facts

2. On the basis of documentation and information made available to us, we understand the facts of the particular case that gave rise to the concerns raised in your memoranda as follows. The staff member in question (hereinafter the complainant) served in a field mission on a 300 series appointment of limited duration on an appointment which was set to expire on 31 October 2007. The complainant was advised by the mission's Personnel Section that he was eligible for consideration for a 100-series contract pending receipt of satisfactory performance appraisals for his four years of service. Near the end of the complainant's appointment, the Director of Administration for the mission concerned (DOA) who was both the first and second reporting officer of the complainant, completed the performance appraisals for two reporting periods. The appraisals of the complainant by the DOA indicated that the complainant only partially met performance expectations. The complainant's 300-series appointment expired on 31 October 2007 and he was not converted to a 100-series appointment. The DOA subsequently retired from the Organization on 30 November 2007.

3. During the course of his service, the complainant had reported various allegations of misconduct to OIOS and later to the Procurement Task Force (PTF). The PTF's investigation of those allegations was completed in July 2008 and it concluded that many of the complainant's allegations were substantiated. As a result, the PTF recommended, *inter alia*, that the Ethics Office undertake a preliminary review of alleged retaliation against the complainant pursuant to ST/SGB/2005/21.

4. In addition, following his separation from service, the complainant approached the Ethics Office in November 2007 alleging that he was the subject of retaliation stem-

* For information on the Secretary-General's bulletins, see note under section 1 of chapter V A, above.

ming from the facts set out in paragraph 2 above. In April 2008, the complainant filed an appeal with the Joint Appeals Board.

5. Based on the complainant's allegations to the Ethics Office in November 2007 and PTF's subsequent recommendation that this matter should be reviewed by the Ethics Office, a preliminary review of the matter was undertaken by the Ethics Office pursuant to section 5.2 of ST/SGB/2005/21.

6. During the course of its preliminary review, the Ethics Office discovered that the DOA had requested that the Department of Peacekeeping Operations (DPKO) undertake a fact-finding mission. That fact-finding mission took place in mid-2007 and made several findings in relation to the complainant's interpersonal skills and existing tensions with his other colleagues. The fact-finding mission also concluded that the complainant's performance appraisal had been delayed and recommended that it should be completed as soon as possible.

7. Following its preliminary review of the facts surrounding the case, the Ethics Office determined that a *prima facie* case of retaliation was present. In accordance with section 5.5 of ST/SGB/2005/21, the Ethics Office referred the matter in writing to OIOS for investigation.

8. After its review of the case, OIOS has indicated that "a proper and fair investigation cannot be concluded where a subject interview is not conducted given that OIOS has no authority to compel the cooperation of former staff members. In the absence of any staff member, also, there is no disciplinary action possible and no apparent purpose, therefore, in any investigation report issued to assist with determining possible disciplinary action."

9. Based on the above, OLA has been requested to advise on the investigative mandate of OIOS and, specifically in this particular case, whether OIOS (a) is not obliged to investigate the matter because no disciplinary action is possible in view of the DOA's retirement; (b) is not obliged to investigate the Organization on the question of whether "it would have taken the same alleged retaliatory action(s) absent the protected activity"; and (c) may decline to pursue the matter.

B. Analysis

(a) Legislative framework

10. According to paragraph 5 (a) of General Assembly resolution 48/218 B, the General Assembly decided that OIOS "shall exercise operational independence under the authority of the Secretary-General in the conduct of its duties and, in accordance with Article 97 of the Charter, have the authority to initiate, carry out and report on any action which it considers necessary to fulfill its responsibilities with regard to monitoring, internal audit, inspection and evaluation and investigations as set forth in the present resolution." These provisions establish the clear operational independence of OIOS, including in matters relating to investigations. Moreover, pursuant to paragraph 5 (c) (iii) of the same resolution, OIOS "shall investigate reports of violations of United Nations regulations, rules and pertinent administrative issuances and transmit to the Secretary-General the results of such investigations together with appropriate recommendations to guide the Secretary-General in deciding on jurisdictional or disciplinary action to be taken."

(b) The relationship between the operational independence of OIOS and section 5.5 of ST/SGB/2005/21

11. With regard to the administrative framework established for purposes of protecting individuals against retaliation for reporting misconduct, section 5.5 of ST/SGB/2005/21 provides that if the Ethics Office "finds that there is a credible case of retaliation or threat of retaliation, it will refer the matter in writing to OIOS for investigation and will immediately notify in writing the complainant that the matter has been so referred. OIOS will seek to complete its investigation and submit its report to the Ethics Office within 120 days." A plain reading of this section would seem to indicate that OIOS is required to investigate all cases of retaliation referred to it by the Ethics Office, and may be read, therefore, to run counter to the operational independence enjoyed by OIOS. In the hierarchy of legal norms, however, resolutions of the General Assembly take precedence over administrative issuances. Therefore, the provisions contained in Secretary-General bulletins, among others, cannot be interpreted in a manner that permits the creation of new obligations that are inconsistent with, or contrary to, decisions of the General Assembly.

12. In the present case, while section 5.5 of ST/SGB/2005/21 calls on OIOS to conduct an investigation if a case is referred to it by the Ethics Office, the operational independence of OIOS, as mandated by the General Assembly, essentially authorizes it to decide whether or not to investigate a matter. In this case, OIOS has taken the position that an *in absentia* investigation would serve no useful purpose since the DOA has retired from service and no disciplinary action would be possible in his case. As a result, OIOS, in light of, and pursuant to, its operational independence, has decided against investigating this case. In light of its mandate, as set forth above, this is a decision that OIOS may make.

(c) Obligation of OIOS to investigate pursuant to section 2.2 of ST/SGB/2005/21

13. With regard to the issue of whether OIOS is obliged to investigate "the Organization rather than individual instances of possible misconduct," I note that the Ethics Office has referred to section 2.2 of ST/SGB/2005/21, which provides that: "[t]he present bulletin is without prejudice to the legitimate application of regulations, rules and administrative procedures, including those governing evaluation of performances non-extension or termination of appointment. *However, the burden of proof rests with the Administration, which must prove by clear and convincing evidence that it would have taken the same action absent the protected activity . . .*." (Emphasis added). This provision establishes that the burden of proof in such cases rests with the Administration, which has to demonstrate that an administrative action would have been taken irrespective of the protected activity.

14. Based on the information provided, I note that the matter is the subject of an appeal that the complainant has lodged with the Joint Appeals Board (JAB) and that is currently under consideration by the JAB. During the JAB proceedings, the burden would therefore be on the Administration to demonstrate that the contested action would have been taken regardless of the protected activity.

15. Taken in this context, we consider that section 2.2 of ST/SGB/2005/21 only establishes which party has the burden of proof in a particular instance, and does not establish a secondary basis on which the Ethics Office may refer a matter to OIOS for investigation, including an investigation of the Organization. Indeed, to have OIOS establish through an investigation of the Organization that the same action would have been taken absent

the protected activity, would be duplicative in view of the review already being undertaken by the JAB. This could result in inconsistent findings that would only further complicate the matter.

5 June 2009

(*f*) Interoffice memorandum to the Under-Secretary General, Department of Field Support (DFS), with regard to a dispute between the United Nations Mission in the Democratic Republic of the Congo (MONUC) and the International Tribunal for Rwanda (ICTR) regarding service charges and indemnities

Provision of petroleum, oils and lubricants by ICTR to MONUC—Issue of payment of administrative fee or service charge falls within purview of Controller—Indemnity provisions not typically used in arrangements between United Nations entities—Division of responsibility for claims, demands, losses and liability between United Nations entities

1. This is in reference to your note addressed to the Legal Counsel, dated 11 June 2009 (received by OLA on 22 June 2009), referring to a Code Cable from MONUC, dated 29 April 2009. In that Code Cable, MONUC seeks guidance in connection with a proposed memorandum of understanding between MONUC and the ICTR for the provision of petroleum, oils and lubricants (POL) to MONUC for its activities in Kigali, Rwanda (MOU).[1] More specifically, MONUC seeks guidance on the following two issues:

I. Whether MONUC should pay an "administrative fee" or "service charge" in respect of the POL being provided by ICTR; and

II. The appropriate indemnity provisions to be included in the proposed MOU.

I. The administrative fee /service charge

2. In relation to the first issue, we understand that since 2004, ICTR has been providing POL services to MONUC in Kigali, on a cost reimburseable basis. Until August 2008, ICTR levied a 14% "administrative fee" in addition to the cost of the fuel supplied. After MONUC objected to the administrative fee, ICTR reduced the rate to 10% and called it a "service charge" rather than an administrative fee. We understand that MONUC has been paying these charges under protest. DFS is now seeking OLA's advice as to the appropriateness of the 10% service charge being levied by ICTR.

3. The issue of payment of administrative fees or service charges in arrangements of this nature falls within the purview of the Controller. As discussed with DFS, we recommend that the Controller's advice be sought in relation to this issue.

II. Indemnity provision

4. In relation to the second issue, we understand that ICTR wishes to include an indemnity provision in the MOU, whereby MONUC would,

[1] We note that MONUC had attached to the Code Cable two versions of the draft MOU. One version has been drafted by MONUC and the other by ICTR.

indemnify, hold and save harmless ICTR and its officials and employees from and against all suits, claims, demands and liability of any kind, including their costs and expenses, arising out of acts or omissions of ICTR staff, or losses or injuries sustained by agency members to whom services are provided under this MOU. (See paragraph 5 of the MOU drafted by ICTR).

However, MONUC has proposed the following, alternative, wording:

ICTR shall indemnify, save and hold harmless and shall defend, at its own cost and expenses, the United Nations, including MONUC, its officials, servants, employees and agents from and against any claims, suits, demands and liabilities of any nature, arising out of acts or omissions of ICTR personnel, employees, agents, officials, sub-contractors or losses or injuries sustained by agency members to whom services are provided under this MOU. (See paragraph 4 of the MOU drafted by MONUC).

5. We note that MONUC and ICTR are both United Nations entities. We further note that indemnity provisions along the lines of those proposed by ICTR and MONUC are not typically used in arrangements between United Nations entities. Accordingly, we would suggest that the relevant provisions in the draft MOU be reformulated as set out below. The revised text is based on previous documents dealing with similar arrangements between United Nations entities. We also consider that the revised wording represents an appropriate division of responsibility between the parties.

ICTR and MONUC shall each be responsible for handling and resolving all claims, demands, losses and liability of any nature or kind in respect of the death, injury, illness, or loss or damage to personal property, sustained by their respective officials, agents and employees, and loss of or damage to the Parties' respective property, arising from or in connection with the implementation of this MOU.

Each Party shall be responsible for handling and resolving all claims, demands, losses and liability of any nature or kind brought or asserted by third parties, based on, arising from, related to, or in connection with the implementation of this MOU to the extent that such claims, demands, losses or liability arise from or in connection with the acts or omissions of that Party, its officials agents or employees.

24 June 2009

(*g*) Note to the Assistant Secretary-General for Policy Coordination and Strategic Planning regarding the United Nations University accreditation process

Proposal that UNU offer graduate degree programmes at the Master's and PhD levels in partnership with other universities—UNU is an autonomous organ of the General Assembly—The General Assembly and Founding Committee of UNU did not intend for it to be a degree-granting university—Proposal to be referred to the General Assembly—General Assembly can interpret the UNU Charter as to comprise a mandate to offer graduate degrees, or amend the Charter as to include such a mandate—Necessary to amend article IX of UNU Charter to allow for fees to be charged from degree candidates—Advisory Committee on Administrative and Budgetary Questions (ACABQ) and the Controller should be consulted regarding financial implications of proposal—As UNU functions under joint sponsorship of the United Nations and UNESCO, UNESCO should be consulted

1. I refer to your note, dated 28 April 2009, seeking a legal opinion as to whether the proposal submitted by the Rector of the United Nations University (UNU) to the Secretary-General regarding UNU's plans for offering graduate degree programmes at the Master's and PhD levels, in partnership with other universities, is compliant with United Nations rules, regulations, and pertinent charters and statutes (the Proposal). We note that the UNU Council discussed the question of accreditation at its 55th session, which took place in Bonn, Germany in December 2008, and that, subject to the Secretary-General's approval, the Rector of UNU would like to submit a final proposal to the Council at its 56th session in December 2009, to approve the accreditation process. I also refer to the note of 4 May 2009 from the Director of the General Legal Division, OLA, informing you that the Proposal would require careful study by this Office and, therefore, it would take some time to provide the requested advice. Subsequently, at the request of UNU, staff of the Office of Legal Affairs (OLA) met with UNU staff on 2 June 2009 to discuss the Proposal. UNU also provided additional information and documentation to OLA on the Proposal.

2. Based on research into the background of the creation of UNU, including relevant records of the General Assembly and the Founding Committee of UNU, we have prepared our legal opinion on the Proposal, attached as an annex to this note. As you will note, the attached annex reviews the background on the establishment of the UNU, including the intent of the founders of UNU on granting of degrees, as well as the terms set forth in the UNU Charter and UNU Council decisions on this question. As that material amply demonstrates, the intent of the founders of UNU and the General Assembly was that the University would not be an institution that would grant advanced academic degrees. In addition, the wording of the UNU Charter does not, in our view, provide sufficient legal basis to implement the Proposal.

3. Therefore, since the Proposal appears to be a departure from the intent of the founders of UNU and of the Member States in the General Assembly, and in view of the status of UNU as an autonomous organ of the General Assembly (see article XI (1) of the Charter), we consider that the Proposal should be referred to the General Assembly for approval before it can be implemented. In doing so, the UNU Rector could request the General Assembly to interpret or agree to amend the Charter of the UNU in such a manner as would permit the granting of advanced degrees. If the Proposal were to be approved or endorsed by the General Assembly, it would be necessary for the Charter of UNU to be amended in accordance with article X thereof to include a specific reference to the granting of academic degrees.

4. Moreover, the Proposal entails financial implications for the University, because significantly more resources would be necessary for UNU to establish degree-granting programmes. Since the financial matters of the UNU are subject to the United Nations Financial Regulations and Rules pursuant to article IX of the Charter, and as the UNU budget proposals are subject to review by the Advisory Committee on Administrative and Budgetary Questions (ACABQ) before they are submitted to the General Assembly together with the report of the UNU Council (see article IX, paragraph 7 of the Charter), we consider that the ACABQ and the Controller should also be consulted on the Proposal.

5. Finally, as the UNU functions under the joint sponsorship of both the United Nations and the United Nations Educational, Scientific and Cultural Organization (UNESCO) pursuant to article I of the Charter of the UNU, we consider that UNESCO should also be consult-

ed regarding this Proposal. Thus, any submission to the General Assembly on the granting of advanced degrees should be made only after consultation with both the Secretary-General of the United Nations and the Executive Director of UNESCO. We are not aware whether UNESCO has been formally approached regarding this Proposal.

6. In view of the foregoing, we consider that it would not be appropriate to consider the options for accreditation of the UNU degree programme unless and until the General Assembly approved the Proposal.

10 July 2009

Annex

[. . .]

IV. Analysis and Recommendation

19. As the discussion on the history of the establishment of the UNU demonstrates, the General Assembly and the Founding Committee of the UNU did not intend for it to be a degree-granting university in the conventional sense of the term. The UNU Charter also does not call for the granting of degrees, and instead refers to the purpose of the University as being "engaged in post-graduate training." While the UNU Charter does not explicitly prohibit the granting of degrees by the UNU, the omission of the references to degrees in the background documents on the establishment of UNU are indicative of the intent of the Founding Committee and the General Assembly in this respect. We also consider that the current wording of article IV of the Charter of UNU (see paragraph 8 above), is not a sufficient basis for UNU to grant advanced degrees, in view of the intent of the Founding Committee of UNU and of the General Assembly. Therefore, the Proposal appears to constitute a departure from the intent of the Founding Committee of UNU and of the General Assembly, and entail broadening of the mandate of UNU.

20. Accordingly, and since UNU is an autonomous organ of the General Assembly (see article XI (1) of the Charter), the proposal for granting advanced degrees should be referred to the General Assembly for approval first. In doing so, UNU Rector could request that the General Assembly interpret the Charter of the UNU, in particular article IV, in such a manner as would permit the granting of advanced academic degrees. Article IV provides, *inter alia,* that the Council of UNU may adopt "such statutes as may be necessary for the application of the Charter" (see article IV (b)) and the establishment of research and training centres and programmes (article IV (c)). Therefore, it appears that article IV could be a starting point for the granting of such degrees if such a mandate were obtained from the General Assembly. Presumably, the scope of this article could be expanded further to include the possibility of a degree- granting institution as a whole, if the General Assembly so decides. Accordingly, if the General Assembly were to approve the proposal for granting advanced degrees and were the General Assembly to decide that the current wording of the Charter of the UNU is sufficient to implement the proposal, then no amendment of the Charter of the UNU would be required.

21. If, however, the proposal were to be approved or endorsed by the General Assembly, but the General Assembly were also to decide that the current wording of the Charter was not sufficient for UNU to grant advanced degrees, it would be necessary for the UNU

to amend its Charter, e.g., article IV, to include a specific reference to the granting of advanced academic degrees. Such a proposed amendment would then have to be submitted to the General Assembly for approval (see article X of the Charter).

22. The proposal for granting advanced academic degrees also entails financial implications for the University, as significantly more resources would be necessary to establish degree-granting programmes. Presumably, fees would be charged to degree candidates who would be enrolled in UNU advanced degree programmes. It does not appear that such fees would fall under "voluntary contributions" from "individuals" which may be accepted in accordance with article IX, paragraph 1(b) of the UNU Charter, or any other financial resources of the UNU, as provided for in article IX of the Charter. . . . Therefore, it appears that it would also be necessary to amend article IX of the Charter of the UNU, in order for the proposal to be implemented. Furthermore, pursuant to paragraph seven of article IX of the Charter of the UNU on "Finance and Budget," the Rector might submit the UNU's budget to the Advisory Committee on Administrative and Budgetary Questions (ACABQ). After receiving comments and recommendations from the ACABQ, the Rector must then submit the budget to the UNU Council for its approval. Finally, the budget must be transmitted to the General Assembly, together with the report of the Council. Given the role of the ACABQ in the procedure for the budget approval of the UNU, the ACABQ should be consulted regarding the financial implications of the proposal. In addition, the Controller of the United Nations should likewise be consulted with regard to such financial implications because the UNU is subject to the Financial Regulations and Rules of the United Nations, pursuant to paragraph six of article IX of the Charter of UNU.

23. Finally, as the UNU functions under the joint sponsorship of both the United Nations and UNESCO, in accordance with article I of the UNU Charter, UNESCO should also be consulted regarding the proposal for the granting of advanced academic degrees, as well as accreditation of the UNU. Moreover, any submission to the General Assembly on this subject should be made only after consultation with both the Secretary-General of the United Nations and the Executive Director of UNESCO. As far as we are aware, UNESCO has not been formally approached regarding the awarding of degrees and accreditation of the UNU.

24. Therefore, prior to proceeding with the accreditation process for UNU and for taking any measures aimed at the granting of advanced academic degrees, UNU must present this proposal before the General Assembly for approval, after consultation with the Secretary-General and with the Executive-Director of UNESCO.

25. In view of the foregoing, we consider that any consideration of the details of the proposal for the UNU accreditation process is premature until and unless the General Assembly has approved or endorsed the proposal for granting of advanced academic degrees. Once such approval or endorsement is obtained, steps could be taken to review the issues relating to the accreditation of UNU.

21 August 2009

(*h*) Note to the Under Secretary-General and Chef de Cabinet, Executive Office of the Secretary-General, concerning General Assembly resolution 63/301 on Honduras

Consequences for representation and accreditation of Member State following General Assembly resolution 63/301—Call by General Assembly not to recognize *de facto* authorities in State—Pending a decision by the General Assembly, on the recommendation of the Credentials Committee, the Secretariat shall act in a manner consistent with resolution—Should any Member State raise an Objection, it would be advised accordingly—Funds and Programmes should act along the same lines—In specialized agencies and the International Atomic Energy Agency the question of the State's credentials should be resolved through the intergovernmental process—In the Human Rights Council recommendation that only duly authorized representatives of the legitimate and constitutional government of the State participate in meetings—Permanent representative whose accreditation has been withdrawn by that government shall be barred from meetings—Nameplate of State to remain in conference room

1. Since the adoption of resolution 63/301 of 30 June 2009 entitled "Situation in Honduras: democracy breakdown" (copy attached),[*] questions have been raised with my Office as to how the United Nations and more broadly the United Nations system should handle the accreditation of representatives from Honduras to upcoming United Nations meetings, including the 64th session of the General Assembly. I therefore thought it useful to set out the legal position on this matter, which has been prepared in consultation with colleagues from the Department of Political Affairs (DPA) and Protocol and has also been shared with the Legal Advisers of the United Nations system. Should the need arise I am also available to address any specific questions on this issue in consultation with DPA and Protocol.

Summary of the advice provided below

— By General Assembly resolution 63/301 of 30 June 2009 the General Assembly demanded the immediate restoration of President Zelaya's Government and called upon Member States to recognize no Government other than that of Mr. Zelaya.

— Ultimately, it is for the Member States, acting through the inter-governmental process, to decide on how they wish to act in light of resolution 63/301. Accordingly any communication received from either President Zelaya's Government or the "*de facto*" authorities will be submitted to the Credentials Committee of the 64th session who will make a recommendation to the General Assembly on the accreditation of representatives from Honduras.

— However, until the General Assembly decides otherwise, the United Nations Secretariat should, with respect to United Nations meetings, act in a manner that is consistent with resolution 63/301, which means that only those delegates from Honduras who can formally confirm that they are the duly authorized representatives of President Zelaya's Government should be invited and allowed to participate in the work of the General Assembly and its subsidiary bodies.

[*] Not reproduced herein.

— Should any Member State object to or raise questions concerning the Secretariat's position, it should be advised, that pending a decision on the credentials of Honduras by the General Assembly, the Secretariat will be acting in a manner that is consistent with resolution 63/301.

— As far as the presence of Honduras at the meetings of the Human Rights Council (HRC) in Geneva is concerned, we would recommend that its Bureau when it meets tomorrow take a decision that only the accredited representatives of President Zelaya's Government be allowed to participate in HRC meetings.

— This decision should then be proposed orally by the HRC President to the meeting and formally adopted.

— As the Permanent Representative of Honduras has had his accreditation withdrawn as the representative of President Zelaya's Government he should, pursuant to the HRC decision, be barred from gaining access to HRC meetings.

— This would also be applicable to other members of the Honduras delegation unless they can formally confirm that they represent President Zelaya's Government.

General Assembly resolution 63/301 of 30 June 2009

2. The General Assembly, by operative paragraph 2 of resolution 63/301, demanded "the immediate and unconditional restoration of the legitimate and Constitutional Government of the President of the Republic of Honduras, Mr. José Manuel Zelaya Rosales, and of the legally constituted authority in Honduras" and also decided by paragraph 3 "to call firmly and unequivocally upon States to recognize no Government other than that of the Constitutional President, Mr. José Manuel Zelaya Rosales."

3. Ultimately, it is for the Member States, acting through the inter-governmental process, to decide on how they wish to act in light of resolution 63/301 when addressing questions concerning the accreditation and representation of Honduras at the General Assembly's 64th session. To that end, any formal communication that the United Nations Secretariat receives from either President Zelaya's Government or the current "*de facto* authorities" in Honduras concerning representatives to the 64th session of the General Assembly should, pursuant to rule 28 of the Rules of Procedure of the General Assembly, be placed before its Credentials Committee. The Credentials Committee will, after reviewing the matter, make a recommendation to the Assembly which will then take a decision on Honduras' credentials.

Composition of the Credentials Committee for the 64th session

4. As far as the composition of the Credentials Committee is concerned, in accordance with prior practice, the Office of Legal Affairs (OLA) consulted with the Member States from various regional groups and Tanzania and Zambia (Africa), China and the Philippines (Asia), the United States and Spain (WEOG), Russia (Eastern Europe) and Brazil and Jamaica (Latin America and the Caribbean), who have agreed to sit on the Credentials Committee for the 64th session. This choice has also been informally communicated to the Office of the President of the General Assembly, so that, in accordance with rule 28 of the Rules of Procedure, the President can propose the composition of the Credentials Committee to the General Assembly at the beginning of the 64th session.

Role of the Secretariat *vis-à-vis* General Assembly resolution 63/301 of 30 June 2009

5. As far as Honduras is concerned, until the General Assembly decides otherwise, the United Nations Secretariat should, with respect to United Nations meetings, act in a manner that is consistent with resolution 63/301, which means that only those delegates from Honduras who can formally confirm that they are the duly authorized representatives of President Zelaya's Government should be invited and allowed to participate in the work of the General Assembly and its subsidiary bodies. In addition, any facilities that the United Nations Secretariat grants to the representatives of Member States in order to facilitate their participation in the work of the General Assembly, including the issuing of badges and grounds passes, should only be provided to those representatives from Honduras who can formally confirm that they are the duly authorized representatives of President Zelaya's Government.

6. In that connection, DPA has informally informed OLA that they understand that the Government Ministries in Honduras are under the control of the "*de facto* authorities" in that country. Thus, DPA has advised that it would be prudent at this stage to place on hold any formal invitations to representatives from Honduras to attend United Nations meetings, unless it is clear that those attending are the duly authorized representatives of President Zelaya's Government.

7. Should the "*de facto* authorities" seek to attend United Nations meetings or request that correspondence be sent to them, they should be advised that the United Nations Secretariat will be acting in a manner that is consistent with resolution 63/301. Consequently, until the General Assembly decides otherwise, the Secretariat will only be in a position to liaise with those representatives from Honduras that can confirm that they are the duly authorized representatives of President Zelaya's Government.

Possibility of an objection in the General Assembly to the presence of a delegation from Honduras

8. Furthermore, should any Member State object or raise questions concerning the Secretariat's position, it should be advised that pending a decision on the credentials of Honduras by the General Assembly, the Secretariat will be acting in a manner that is consistent with resolution 63/301. Any Member State can also raise this issue formally within the General Assembly pursuant to rule 29 of the Rules of Procedure which provides that, "Any representative to whose admission a Member has made objection shall be seated provisionally with the same rights as other representatives until the Credentials Committee has reported and the General Assembly has given its decision." The Credentials Committee for the 64th session can then meet on an urgent basis and make its recommendation to the General Assembly.

United Nations Funds and Programmes and the United Nations specialized agencies and the International Atomic Energy Agency

9. We have also advised the Legal Advisers of the United Nations Funds and Programmes that they should act with regard to representatives from Honduras along the lines we set out above for the United Nations Secretariat.

10. As far as the United Nations specialized agencies and the International Atomic Energy Agency (IAEA) are concerned, we have advised that the question of Honduras' credentials should be resolved through the inter-governmental process. It is therefore for the member States of each agency and the IAEA, acting through their inter-governmental bodies and in accordance with their rules of procedure, to decide how they wish to act in light of resolution 63/301 when addressing questions concerning the accreditation and representation of Honduras and whether they wish to approve credentials received from either President Zelaya's Government or the current "*de facto* authorities."

11. However, pending a decision on the credentials of representatives from Honduras, we have recommended to the Legal Advisers of the specialized agencies and the IAEA that representatives from Honduras be dealt with in a manner that is consistent with resolution 63/301 and along the lines set out above.

Human Rights Council in Geneva

12. Finally, the HRC convened in Geneva today and the Office of the High Commissioner for Human Rights (OHCHR) Secretariat has been in touch with my office concerning the presence of Honduras at these meetings. While not a member of the HRC, Honduras has nevertheless participated as an observer in its previous meetings. OHCHR has informed us that the Permanent Representative of Honduras to the United Nations Office in Geneva (UNOG), [Name], has indicated his intention to represent Honduras.

13. However, we were informed today by representatives from OHCHR that [Name] has had his accreditation withdrawn by President Zelaya and that the Secretary-General had been informed of this by letter dated 20 August 2009 (copies of the relevant correspondence attached).*

14. We have therefore indicated to OHCHR that in our view, [Name] does not represent President Zelaya's Government. We have recommended that at tomorrow's Bureau meeting, immediately prior to the HRC meeting, the Bureau which comprises the President and the representatives of the various regional groups be informed of the above-mentioned letter to the Secretary-General and agree in line with resolution 63/301 that only the duly authorized representatives of President Zelaya's Government participate in the meetings of the HRC. This proposal can then be gaveled by the President of the HRC when the meeting begins and constitutes a formal decision of that body.

15. Consequently, [Name] can then be barred by United Nations security from gaining access should he try to enter the HRC Chamber. As far as the other representatives from Honduras are concerned, unless they can formally confirm that they are the duly authorized representatives of President Zelaya they should also be barred from gaining access to the HRC Chamber.

16. As a temporary measure and until the HRC has taken its decision, United Nations security should be given instructions to bar any representative from Honduras from gaining access to the HRC Chamber.

17. Finally, as this is a question of accreditation and representation, the nameplate of Honduras should remain in the conference room.

14 September 2009

* Not reproduced herein.

(*i*) Interoffice memorandum to the Assistant Secretary-General, Department of Field Support, regarding the legal status of military drivers provided by the Governments of India and Pakistan

Legal status of drivers provided to United Nations Military Observer Group in India and Pakistan (UNMOGIP) by the Governments of India and Pakistan in their respective territories—Drivers belong to their respective national defense forces and are not under managerial control of UNMOGIP—Recommendation that details of arrangement set out in agreements with the Governments concerned

1. This is in response to your memorandum, dated 30 October 2009, requesting our advice with regard to the legal status of military drivers provided to United Nations Military Observer Group in India and Pakistan (UNMOGIP) by the Governments of India and Pakistan. You also request our advice as to the extent to which UNMOGIP may exercise managerial control over the military drivers.

2. As noted in your memorandum, the Governments of India and Pakistan each provide military personnel to drive UNMOGIP vehicles in their respective territories. Although this practice has been in place for many years, it is not reflected in any written agreements with the Governments concerned.

3. As regards their legal status, the Indian and Pakistani military drivers are members of their respective national defence forces. As such, they are not subject to United Nations regulations and rules, nor is UNMOGIP entitled to exercise managerial control over them, save to the extent specifically agreed with their national Governments.

4. Accordingly, should it be decided that this practice is to continue, we recommend that the details of such arrangements be set out in an appropriate agreement with each of the Governments concerned. Such agreement should include provisions governing the parties' respective responsibilities in the event of vehicle accidents and resultant claims, as well practical measures to ensure that the driving skills of the Government-provided personnel are adequately monitored. In view of recent discussions on this issue, we also recommend that the security aspects of the continued use of the Government-provided drivers be coordinated with the Department of Safety and Security.

3 December 2009

3. Procurement

(*a*) Interoffice memorandum to the Chief, Procurement Operations Service, Procurement Division, concerning a request for reimbursement of value added tax (VAT) charges from the United Nations Interim Force in Lebanon (UNIFIL)

Obligation under contract to reimburse contractor for taxes from which the United Nations is not exempt—Convention on the Privileges and Immunities of the United Nations—Remission of indirect tax for important purchases for official use—VAT considered an indirect tax—"Important" purchase under section 8 of the Convention if it is reoccurring and involves a considerable quantity of goods or services—UNIFIL exempt from VAT under status-of-forces agreement—

CONTRACTOR NOT ENTITLED TO REIMBURSEMENT OF VAT—PROPOSAL TO REQUEST FROM NATIONAL AUTHORITIES A REFUND OF THE VAT PAID

1. I refer to your memorandum to the Director of the General Legal Division, seeking our advice on a claim from [Company] for the reimbursement of value added tax (VAT) under a contract concluded on 18 April 2007 (the Contract) between the United Nations and [Company] for the provision of food rations, bottled water and other services and equipment to the United Nations Interim Force in Lebanon (UNIFIL). I also refer to numerous e-mail messages from the Procurement Division, in February and March 2009, providing us with further information and clarifications regarding this matter.

2. From the information provided to us, I understand that [Company] requests UNIFIL to be reimbursed for VAT in the amount of [USD] paid to local suppliers for goods and services that were provided to UNIFIL under the above-mentioned Contract.

REIMBURSEMENT OF VAT UNDER THE CONTRACT

3. Article 6.4 of the Contract states that "(t)he contractor shall specify in its unit prices all taxes and other governmental levies that the contractor is required to charge to the United Nations. *The United Nations agrees to reimburse the contractor for such taxes for which the United Nations is not tax-exempt*, subject to the contractor providing the United Nations with evidence acceptable to the United Nations of the contractor's payment of such taxes to the appropriate taxing authority" (emphasis added). Accordingly, under the Contract, two conditions must be fulfilled in order for [Company] to be entitled to reimbursement of the VAT claimed under article 6.4. First, the VAT must be in the nature of a tax from which the United Nations is not exempt. Second, the contractor must provide proof that it has paid the VAT. The second issue can only arise if the first requirement is fulfilled. In our view, as discussed below, the VAT claimed by [Company] is a tax from which the United Nations is exempt.

REMISSION OF VAT UNDER THE 1946 CONVENTION

4. The 1946 Convention on the Privileges and Immunities of the United Nations* the Convention), to which Lebanon acceded on 10 March 1949 without reservation, provides in section 8 that "while the United Nations will not, as a general rule, claim exemption from excise duties and from taxes on the sale of movable and immovable property which form part of the price to be paid, *nevertheless when the United Nations is making important purchases for official use of property on which such duties and taxes have been charged or are chargeable, Members will, whenever possible, make appropriate administrative arrangements for the remission or return of the amount of duty or tax*" (emphasis added).

5. In United Nations practice, VAT is deemed to be an indirect tax within the meaning of section 8 of the Convention. The question whether a particular purchase is "important" within the meaning of section 8 of the Convention has usually been determined on the basis whether it is a reoccurring purchase or whether it involves a considerable quantity of goods or services. The provision of food rations and bottled water and other services and equipment by [Company] to UNIFIL is a reoccurring purchase and does involve a considerable quantity of goods and services. Therefore, these purchases fall, without a

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

doubt, within this category. Accordingly, UNIFIL, as a subsidiary organ of the United Nations, can also claim a remission or refund of VAT under the Convention in respect of purchases by UNIFIL.

Exemption of UNIFIL from VAT under the UNIFIL SOFA

6. In reality, however, it would not be necessary for UNIFIL to claim a remission or refund under the Convention since UNIFIL can avail itself of the Agreement between the United Nations and the Government of Lebanon on the Status of UNIFIL, dated 15 December 1995 (the UNIFIL SOFA), which provides a tax exemption regime specifically to that mission. Paragraph 20 of the UNIFIL SOFA provides that "[t]he Government undertakes to assist UNIFIL as far as possible in obtaining equipment, provisions, supplies and other goods and services from local sources required for its subsistence and operations. In making purchases on the local market, UNIFIL shall, on the basis of observations made and information provided by the Government in that respect, avoid any adverse effect on the local economy. *The Government shall exempt UNIFIL from any taxes or duties in respect of all official local purchases*" (emphasis added). Pursuant to this paragraph, UNIFIL is exempt from VAT on all local official purchases in Lebanon.

7. Accordingly, [Company] is not entitled to claim VAT reimbursement from the United Nations. Indeed such reimbursement would negate the United Nations exemption from VAT charges in Lebanon. We propose that UNIFIL inform [Company] of this position.

Assisting [Company] in obtaining VAT reimbursement from the Government

8. There remains the question whether the United Nations should assist the contractor to get a refund from the Government of Lebanon of the VAT it has paid. The Protocol of Amendment of Agreement between the United Nations and the Government of Lebanon on the Status of the United Nations Interim Force in Lebanon (Protocol of Amendment), amending the UNIFIL SOFA to ensure that, *inter alia*, "the necessary facilities and exemptions are conferred on contractors who perform services or supply equipment, provisions, supplies and other goods in support of UNIFIL," has not been signed by the Lebanese Government to date. Hence, there is currently no legal basis for contractors to directly request the Lebanese Government for VAT exemption.

9. However, in the absence of an exemption of UNIFIL contractors from VAT, the VAT levied by the Government on goods and services locally purchased by [Company] under the Contract could end up being passed on to the United Nations in the form of increased charges for such goods and services. This would have the effect of negating the United Nations' exemption from VAT with respect to such goods and services. We therefore recommend that the United Nations takes up this issue with the relevant Lebanese authorities. Thus, we propose that UNIFIL send a letter to the relevant authorities requesting a refund of the VAT paid, on the grounds that the goods and services purchased by [Company] were exclusively intended for the official use of UNIFIL and should therefore be deemed VAT-exempt. UNIFIL should provide any additional support required so that the VAT paid on these goods and services can be refunded to [Company]. We have

prepared the attached draft letter* from UNIFIL to the relevant Lebanese authorities for consideration by UNIFIL.

10. I would be grateful if you could keep my Office informed of any developments regarding this matter, in particular, whether the relevant authorities are amenable to our request. We also propose that UNIFIL inform [Company] about the efforts being undertaken by the Organization in this regard.

19 March 2009

(*b*) Interoffice memorandum to the Director, Procurement Division, and the Officer-in-Charge, Logistics and Support Division, regarding a contract for the supply of aviation and ground fuel and the provision of distribution and support services for the United Nations Mission in the Central African Republic and Chad

Pre-contractual mobilization by company providing fuel distribution and support services to United Nations mission—The United Nations cannot conclude separate memorandum of understanding providing for recognition of and protection for personnel prior to conclusion of contract—Mobilization work undertaken prior to conclusion of a written agreement done at risk of company—Insistence by the United Nations that company meet deadline may give rise to claims of quasi-contractual liability—Possibility to administratively arrange for personnel to be issued a letter identifying company as an international civilian contractor providing pre-contractual mobilisation services in the mission area

1. This Office is providing legal support to the Procurement Division (PD) and to the Department of Field Support (DFS) in their current negotiations with [Shipping Services Company], which is trading as [Company], for the conclusion of a proposed agreement (proposed contract) for the supply of aviation and ground fuel and the provision of related fuel distribution and support services for the United Nations Mission in the Central African Republic and Chad (MINURCAT). During the course of negotiations for the proposed contract, PD and DFS insisted that [Company] mobilize its operations in the mission area no later than 1 June 2009 because of MINURCAT's critical requirements that fuel supplies and related fuel distribution services be available by that time. We understand that, while the United Nations and [Company] originally contemplated a 90-day mobilisation period following contract award, MINURCAT's operational requirements have fixed the timeframe for mobilisation to be 1 June 2009, and [Company] has agreed in principle to meet that mobilisation deadline, "at least in part." However, because of other issues that are as yet to be resolved between them, the United Nations and [Company] are continuing to negotiate over the terms and conditions of the proposed contract.

2. During recent negotiations with [Company] concerning the terms and conditions of the proposed contract, [Company] stated that the company had already positioned certain of its personnel within the MINURCAT mission area in order to meet the 1 June 2009 mobilisation deadline. Subsequently, [Company]'s in-house attorney sent this Office a draft memorandum of understanding (MOU) that would require the Organization to

* Not reproduced herein.

obtain from governmental authorities in the MINURCAT mission area recognition of and protection for [Company] personnel in the mission area performing services for the mobilisation effort. Thus, under the terms of such draft MOU, the United Nations would inform the Governments of Chad and the Central African Republic about the identities of [Company] personnel undertaking pre-contractual, mobilisation services in the MINURCAT mission area. In addition, the draft MOU would further require the Organization to issue such [Company] personnel MINURCAT identification badges, as is done under the relevant Status of Forces Agreements (SOFAs) between the United Nations and Chad and the Central African Republic in respect of the personnel of established contractors providing services for MINURCAT. [Company] considers that such recognition would reduce the risks that its personnel face in the MINURCAT mission area in performing pre-contractual mobilisation services that are required in order to meet the United Nations 1 June 2009 mobilisation deadline.

3. In response to such request, this Office has informed [Company]'s in-house attorney that, although [Company]'s concerns about the risks its personnel face while performing pre-contractual mobilisation services in support of MINURCAT without a signed contract are understandable, the United Nations could not enter into a separate MOU or other agreement with [Company] for such purposes. Thus, in accordance with applicable United Nations regulations, rules and policies, only the proposed contract, if and when it is concluded, will constitute the entire agreement between the United Nations and [Company] on all aspects of their respective rights and obligations regarding the supply of aviation and ground fuel and the provision of related fuel distribution and support services for MINURCAT. At the same time, given [Company]'s concerns about the risks that its personnel face in performing pre-contractual mobilisation services in the mission area, this Office further informed [Company]'s in-house attorney that we would inform and consult with PD and DFS with a view to finding an administrative approach for the presence of [Company] personnel in Chad who are performing pre-contractual mobilisation services that are required in order to meet the United Nations 1 June 2009 mobilisation deadline.

Possible Administrative Arrangement

4. This Office understands that, notwithstanding the United Nations' insistence on maintaining the 1 June 2009 mobilisation deadline, PD and DFS have advised [Company] that any mobilization work that [Company] undertakes in order to meet that deadline is at its own risk, unless and until such time as the parties have entered into the proposed contract. While this Office supports the principle that potential contractors act at their own risk until a written agreement is concluded, the fact that PD and DFS have insisted that [Company] continue to meet the 1 June 2009 mobilisation deadline and the fact that [Company] is taking steps to meet the deadline, even before the proposed contract is concluded, could give rise to claims by [Company] of quasi-contractual liability on the part of the Organization (e.g., claims of promissory estoppel or other claims arising from a *de facto* contractual relationship), or even claims that the Organization owes [Company] and its personnel a duty of care, particularly if [Company] personnel are injured or die during the course of performing such pre-contractual mobilisation services for MINURCAT. This Office further notes that the Organization is exposed to greater risk, the longer it takes to conclude a contract with [Company].

5. Therefore, insofar as PD and DFS have required [Company] to perform pre-contractual mobilisation services in order to meet the 1 June 2009 deadline and to the extent that PD and DFS consider that [Company] personnel within the mission area are specifically performing such pre-contractual mobilisation services in connection with the proposed contract still under negotiation, then rather than entering into the MOU proposed by [Company], PD and DFS may wish to simply administratively arrange for [Company] personnel to be issued a letter. Such letter would state that [Company] is an international civilian contractor whose activities in the mission area are solely for the provision of pre-contractual mobilisation services in respect of a proposed contract expected to be concluded with the United Nations for the supply of fuel and related support services, exclusively in support of MINURCAT's operations. Such a letter could also state that all purchases, imports and exports made by [Company] for such pre-contractual mobilization services are exclusively for and directly in support of MINURCAT.

8 April 2009

(*c*) Interoffice memorandum to the Chairman of the Headquarters Committee on Contracts regarding accountability of the Committee with respect to procurement actions

Accountability of Headquarters Committee on Contracts (HCC) with respect to repeated endorsements of contracts exceeding amounts and duration originally authorized—Audit report finding that HCC had not discharged its functions as prescribed in the Procurement Manual—HCC is a body without decision-making authority and without fiduciary or oversight responsibility—Members of HCC are subject to Staff Rules—Distinction between financial loss suffered by the Organization resulting from inadvertent error, oversight or simple negligence, and gross negligence—Staff members, if found to have been grossly negligent, can be individually responsible for losses suffered by the Organization

1. I refer to your memorandum, dated 13 March 2009, concerning the responsibilities and duties of the Headquarters Committee on Contracts (HCC) with respect to procurement actions which are subject to the HCC review pursuant to rule 105.13 of the Financial Regulations and Rules of the United Nations. In particular, you requested advice on the accountability, financial or otherwise, of the members of the HCC flowing from the HCC recommendations on procurement actions in which the Committee renders advice to the Assistant Secretary-General for Central Support Services (ASG/OCSS).

Audit report AH/2007/513/05 by the Office of Internal Oversight Services

2. We understand from your memorandum that the issue of the HCC's accountability has been raised in connection with a recommendation made by the Office of Internal Oversight Services (OIOS) in its audit report AH/2007/513/05, dated 3 March 2009, entitled "Selected outsourced activities in the Information Technology Services Division (ITSD); control weaknesses in the procurement and management of certain outsourced activities in ITSD" (Audit Report). According to the relevant sections of the Audit Report, which you forwarded with your memorandum, OIOS has made a recommendation regarding the accountability of the members of the HCC in the context of OIOS' audit of two separate

information technology services contracts between the United Nations and contractors identified in the Audit Report as Company X and Company Y (IT Contracts).

3. Regarding the IT Contracts, the Audit Report states that the IT Contracts' terms were repeatedly extended, and the not-to-exceed (NTE) amounts provided for under these contracts were significantly increased.[1] The Audit Report also states that the requests for the term extensions and the increases in the NTE amounts for the IT Contracts were reviewed by the HCC on five separate occasions, and the HCC "repeatedly endorsed" these requests (see paragraphs 51–55, Audit Report). The Audit Report concludes that "the controls [established pursuant to the Procurement Manual, the Financial Regulations and Rules of the United Nations, the HCC, contract provisions] have proven to be ineffective because there has been no accountability for non-compliance" (*ibid,* paragraph 58). OIOS, therefore, recommends in relevant part, as follows:

> Recommendation 8
>
> (8) The Under-Secretary-General for Management . . . should determine accountability concerning the failure by . . . the Headquarters Committee on Contracts to properly discharge their *fiduciary and oversight responsibilities* by their repeated contract extensions beyond the option period and without the required performance evaluation of Company X and Company Y. *(Ibid,* paragraph 58, emphasis added.)

4. As explained in your memorandum, Management has not accepted the above-quoted OIOS recommendation. According to the Audit Report, Management stated that "this recommendation is also not accepted because HCC is an administrative body which is not responsible for performance evaluations of vendors, nor is it responsible for contract administration" (*ibid*., paragraph 59). OIOS did not accept Management's explanation for rejecting the OIOS recommendation and maintained its position that "by repeatedly recommending extension of contract durations . . . over a prolonged period beyond the contractual expiry dates, HCC did not properly discharge its functions as described in the Procurement Manual" (*ibid*, paragraph 63).

Rule 105.13 of the Financial Regulations and Rules

5. Rule 105.13 of the Financial Regulations and Rules of the United Nations defines the authority and responsibility for the procurement functions of the Organization, including the responsibilities of the HCC for procurement actions that are subject to its review. Rule 105.13 (a) of the Financial Regulations and Rules of the United Nations vests the Under-Secretary-General for Management[2] with authority for the establishment of the Organization's procurement system and with the authority to designate the officials responsible for performing procurement functions. Rule 105.13 (b) requires the Under-

[1] According to the Audit Report, the IT Contracts with Company X and Company Y were extended beyond their approved duration seven and five times, respectively, over a two-year period. In addition, the Audit Report states that the NTE amounts for the IT Contracts were increased by 185% and 525%, respectively, from the initial amounts recommended by the HCC and approved by the ASG/OCSS. (See Audit Report, paragraph 64.)

[2] Pursuant to ST/AI/2004/1 of 8 March 2004, authority and responsibility under 105.13 (a) have been delegated to the ASG/OCSS.

Secretary-General for Management[3] to establish review committees at Headquarters and other locations to advise the Under-Secretary-General for Management (or, in this case, her delegate, the ASG/OCSS) on procurement actions leading to the award or amendment of procurement contracts. Rule 105.13 (c) provides that where the advice of a review committee is required, the Under-Secretary-General for Management[4] (or, in this case, her delegate, the ASG/OCSS) must receive such advice before making his decision, which advice he can *accept or reject*.

6. Regarding the HCC's responsibilities, section 2.3.1 (b) of the Procurement Manual (Rev. 05) provides that the general role of the HCC is to "examine and provid[e] general advice" on procurement actions. Moreover, section 2.3. 1(c) of the Procurement Manual (Rev. 05) stipulates that "the HCC is not responsible for reviewing or providing advice on the adequacy or necessity of the requirement being met under the proposed procurement action, nor for substituting its opinion on how to conduct a particular procurement action."

7. Therefore, pursuant to rule 105.13 of the Financial Regulations and Rules and the relevant sections of the Procurement Manual (Rev. 05), the HCC has a general advisory role only. Thus, the HCC's primary responsibility is to propose recommendations on certain procurement actions. Such recommendations may then be accepted or rejected by the Under-Secretary-General for Management,[5] who alone exercises decision-making authority over procurement actions leading to the award or amendment of procurement contracts. Accordingly, the members of the HCC cannot be said to have any role in deciding on matters relating to such procurement actions.

Fiduciary responsibility

8. The Audit Report recommends that the Under-Secretary-General for Management determine the accountability of the HCC for its failure to properly discharge its fiduciary responsibilities. The OIOS recommendation would appear to be premised on the assumption that the members of the HCC have a fiduciary duty with respect to the procurement actions that are reviewed by the HCC. Moreover, OIOS considers that such fiduciary duty was not properly exercised by members of the HCC in connection with the HCC review of the IT Contracts and that such alleged improper discharge of such a duty has presumably led to financial losses to the Organization.

9. Any failure to properly discharge a fiduciary duty depends, of course, on whether a fiduciary relationship in fact exists between the members of the HCC and the Organization with respect to procurement actions that the HCC reviews. Only if such a fiduciary relationship exists can consideration then be given as to whether that duty was breached and whether such breach may have given rise to a quantifiable loss to the Organization.

---

[3] Pursuant to ST/AI/2004/1, authority and responsibility under 105.13 (b) have been delegated to the ASG/OCSS in consultation with Controller.

[4] Pursuant to ST/AI/2004/1, authority and responsibility under 105.13 (c) have been delegated to the ASG/OCSS.

[5] For procurement cases relating to the UNJSPF, the HCC submits its recommendations to the head of the UNJSPF.

10. In this regard, we note that a fiduciary obligation entails one of the most demanding standards of responsibility generally prescribed by legal systems, and the status of being a fiduciary gives rise to certain specific duties and obligations. Generally, a fiduciary relationship exists where a person or an entity has undertaken to act in the interests of another and not in his or its own interest. In common law systems, for example, individuals or institutions that serve as executors of estate, directors in corporations, receivers in bankruptcy, or trustees of a trust have fiduciary responsibilities. Within the context of the United Nations, the Secretary-General who is considered to be a trustee of the assets of the United Nations Joint Staff Pension Fund has been recognized as having a fiduciary responsibility with respect to the interests of the participants and beneficiaries of the United Nations Joint Staff Pension Fund under the Regulations and Rules of the Fund.[6] The key element in most legal systems for the recognition of such a fiduciary obligation is that the entity or individual having such fiduciary duty must exercise decisional authority over the assets or liabilities of another person or entity. In short, fiduciary responsibility implies an ability to control the disposition of such assets or liabilities.

11. As noted in Management's response to OIOS' recommendation, the HCC is an administrative body without decision-making authority. The HCC's recommendations are subject to the decision-makers' consideration and subsequent acceptance or rejection. We do not consider that the responsibilities and duties of the HCC, which acts in a limited advisory capacity, are comparable to those of fiduciaries, such as those described above.

Oversight responsibility

12. The Audit Report also recommends that the Under-Secretary-General for Management determine the accountability of the HCC for its failure to properly discharge its oversight responsibilities. The OIOS recommendation would appear to be premised on the assumption that an oversight responsibility exists for the HCC with respect to the procurement actions it reviews; the HCC failed to discharge this responsibility; and the breach proximately caused injury to the Organization.

13. As discussed above in connection with the issue of fiduciary duty, the responsibility of the HCC is to provide advice to the decision-makers on certain procurement actions leading to the award or amendment of procurement contracts. Thus, the HCC has an advisory role, which is separate and distinct from oversight or monitoring functions. Insofar as the relevant sections of the Financial Regulations and Rules and the Procurement Manual (Rev. 05) limit the role of the HCC to an advisory one, it would appear that oversight authorities or responsibilities are not specifically contemplated for the HCC. In addition, we note that, according to General Assembly resolution 48/218B of 29 July 1994, pursuant to which the OIOS was established, the oversight functions within the United Nations rest with the OIOS. In this regard, we understand that OIOS often requests and is permitted to have its representatives attend meetings of the HCC or review the minutes thereof in order to carry out OIOS oversight responsibilities.

[6] See General Assembly resolution 35/216 of 17 December 1980, Part B.

ACCOUNTABILITY UNDER STAFF RULES AND THE FINANCIAL REGULATIONS AND RULES

14. Irrespective of whether the HCC, or its members, have fiduciary or oversight responsibilities for the procurement actions subject to its review, the members of the HCC remain subject to staff rule 112.3[7] and rule 101.2 of the Financial Regulations and Rules, relating to the accountability of staff members of the United Nations. Thus, staff rule 112.3 provides that:

> Any staff member may be required to reimburse the United Nations either partially or in full for any financial loss suffered by the United Nations as a result of the staff member's *gross negligence* or of his or her having violated any regulation, rule or administrative instruction. (Emphasis added.)

In addition, rule 101.2 of the Financial Regulations and Rules provides, in relevant part, that:

> [a]ny staff member who contravenes the [Financial Regulations and Rules] or corresponding administrative instruction may be held personally accountable and financially liable for his or her action.

15. The implementation of staff rules 112.3, 212.2, 312.2 and rule 101.2 of the Financial Regulations and Rules is subject to the conditions set forth in administrative instruction* ST/AI/2004/3, of 29 September 2004, entitled "Financial responsibility of staff members for gross negligence." That Administrative Instruction details the procedures applicable to cases giving rise to financial recovery proceedings. Sections 1.2 and 1.3 of ST/AI/2004/3 provide as follows:

> 1.2 The provisions of the present [administrative] instruction are based on the Organization's established policy to maintain a clear distinction between:
>
> (a) Instances where a financial loss suffered by the Organization results from an inadvertent error, oversight or simple negligence, or inability to foresee the negative consequences of a chosen course of action, in which case no financial recovery against staff members shall be undertaken and any deficiencies on the part of the officials involved shall be addressed through performance management mechanisms; and,
>
> (b) Instances where a financial loss results from gross negligence, as defined in section 1.3 below. Financial responsibility in such instances shall be established in accordance with the provisions set out in the present instruction.
>
> 1.3 For the purposes of the present instruction, 'gross negligence' is negligence of a very high degree involving an extreme and wilful or reckless failure to act as a reasonable person in applying or in failing to apply the regulations and rules of the Organization.

16. Thus, pursuant to ST/AI/2004/3, before the issue of personal accountability arises, whether financial or otherwise, a determination must be made as to whether the Organization has suffered quantifiable financial loss due to the HCC recommendations relating to the IT Contracts. We note that the Audit Report does not specify the amount of the financial loss suffered by the Organization because of the HCC recommendations on the IT Contracts. In this regard, as you pointed out in your memorandum, in calculating the resulting financial loss, if any, the Organization would need to consider whether the HCC, or its members, could be held accountable, financially or otherwise, for recommend-

[7] See also staff rules 212.2 and 312.2.

* For information on administrative instructions, see note under section 2 of chaper VI B, above.

ing against the extension of a critical contract, such as the IT Contracts, which, following acceptance of the recommendation by the decision maker, results in operational disruption and costs resulting from such disruption.

17. Once a finding has been made with respect to the Organization's financial loss, if any, consideration could then be given as to whether the financial loss suffered by the Organization, if any, resulted from "inadvertent error, oversight or simple negligence, or inability to foresee the negative consequences of a chosen course of action" or "gross negligence." ST/AI/2004/3 sets out the procedures to be followed when there is "reason to believe that the gross negligence of a staff member may have led to financial loss or receives credible allegations to that effect."

Conclusion

18. In the light of the foregoing, in our view, the HCC is an advisory body whose responsibilities, as set forth in the Financial Regulations and Rules and the Procurement Manual (Rev. 05), do not appear to give rise to fiduciary or oversight responsibilities.

19. Nevertheless, it is clear that the members of the HCC are subject to staff rule 112.3 (or 212.2 or 312.2, as appropriate) and rule 101.2 of the Financial Regulations and Rules. Pursuant to the procedures set forth in ST/AI/2004/3 on financial recovery proceedings, if the members of the HCC are to be held personally accountable for any advice given by the HCC, then the Organization must first establish whether the Organization suffered quantifiable financial loss as a result of the HCC's recommendations. Once such a finding has been made, consideration would then be given as to whether the loss resulted from (i) inadvertent error, oversight or simple negligence or (ii) gross negligence. If the financial loss resulted from inadvertent error, oversight or simple negligence, then deficiencies, if any, on the part of the HCC, or its members, should be addressed through performance management mechanisms. If, however, the final loss resulted from the "gross negligence" of the members of the HCC, as that term is defined in the administrative instruction ST/AI/2004/3, then financial responsibility should be established in accordance with the provisions set out therein.

10 July 2009

(*d*) Interoffice memorandum to the Director, Procurement Division, Office of Central Support Services, regarding the participation of a vendor in the competitive solicitation for the build phase of the United Nations Enterprise Resource Planning Project

Importance of scrupulous adherence to procedures set forth in request for proposals in procurement process—Requirement to conclude "fire wall" agreement to avoid information obtained by a company during design phase to provide unfair advantage *vis-à-vis* other vendors competing in the build phase—Definition of the term "design phase related information"

1. This refers to an e-mail message from the Procurement Division (PD) to the Office of Legal Affairs (OLA), dated 23 September 2009, transmitting for our review a draft agreement to be executed between the United Nations and [Company] in connection with

[Company]'s possible participation in the upcoming competitive solicitation exercise for the build phase (Build Phase) of the Enterprise Resource Planning Project (ERP). We also refer to subsequent telephone and e-mail exchanges between representatives of our Offices, including a telephone discussion among representatives of PD, OLA and [Company] on 25 September 2009 regarding the terms of the proposed agreement.

2. According to PD e-mail messages, we note that the United Nations and [Company] entered into a contract for the provision of design phase services (Design Phase) for ERP (PD/C0095/09) on the basis of the request for proposal (RFPS-1289), dated 12 January 2009. The Statement of Work (SOW) appended to the request for proposal, a copy of which was provided to OLA on 25 September 2009, provides that the services for the Build Phase would be procured by the United Nations under a separate competitive solicitation and would be subject to certain conditions set forth therein.

3. At the outset, it seems to us that it would be extremely important for the United Nations to adhere scrupulously to the procedures set forth in the request for proposal regarding all vendors,' including [Company]'s, participation in the Build Phase competitive solicitation. A failure to observe those procedures may result in criticism and potential claims against the Organization by aggrieved vendors. In order to avoid any such criticism and potential claims for having acted arbitrarily, it is necessary to ensure that the competitive solicitation for the Build Phase is carried out pursuant to the terms and procedures included in the request for proposal with respect to the Build Phase competitive solicitation, and in particular, article 2.4 of the SOW of the request for proposal, which stipulates certain specific conditions about that solicitation.

4. Regarding participation in competitive solicitation for the Build Phase, article 2.4 of the SOW provides as follows:

> [t]he Service Providers wishing to participate in the solicitation(s) for the subsequent phase(s) may do so, should they wish and qualify as per criteria set in the solicitation documentation. However, the Service Provider that will be awarded the contract for the Design Phase, will be requested to *sign a "fire-wall" agreement, whereby the mobilized Design Phase Team agrees that any and all Design Phase related information will be contained within the team, and that no advance information will be passed on inside the company to assist those who may be preparing a bid for the subsequent phases.* (Emphasis added).

5. Therefore, pursuant to article 2.4 of the SOW, because [Company] was awarded the Design Phase contract, [Company]'s participation in the Build Phase competitive solicitation is conditional upon [Company]'s concluding a "fire-wall" agreement. Such "fire-wall" agreement, according to article 2.4 of the SOW, would include, at a minimum, the following undertakings by [Company]:

> (i) any and all Design Phase related information will be contained within the [Company] team [mobilized for the Design Phase]; and
>
> (ii) no advance information will be passed on inside [Company] to assist those who may be preparing a bid for the subsequent phases.

6. It is worth noting in this connection that section 9.11.2 (2) of the Procurement Manual includes the following guidance on source selection process:

> [a]11 invitees shall receive the same information, and to the extent possible, *simultaneously*, to avoid the appearance of partiality, and to prevent the perception that other

> parties have received information that can offer them an advantage in winning United Nations contract awards. (Emphasis added.)

The requirements described in article 2.4 of the SOW regarding (i) the containment of all Design Phase related information strictly within the [Company] team working on the Design Phase; and (ii) the prohibition against sharing of advance information or the provision of assistance by the [Company] team working on the Design Phase to those [Company] personnel who may be preparing the Build Phase proposal are consistent with the above-cited section of the Procurement Manual, as well as the four general procurement principles set forth in financial regulation 5.12. In order to ensure compliance with such provision of the Procurement Manual and such Financial Regulation, as well as the specific terms of the request for proposal, the "fire-wall" agreement envisaged under article 2.4 of the SOW should ensure that [Company] is prohibited from gaining an unfair advantage *vis-à-vis* other vendors competing in the Build Phase competitive solicitation, including because of improperly obtaining access to ERP or other United Nations-related information during the Design Phase.

7. In this regard, the definition of what constitutes "Design Phase related information," which must be strictly contained within the [Company] team working on the Design Phase, is critical in guarding against [Company]'s gaining a possible advantage due to its involvement in the Design Phase. Article 3 of the draft agreement transmitted by PD defines "Design Phase related information," as follows:

> [Company] shall not permit any individuals who have knowledge of or involvement in the development of the Design Documents under the Master Services Agreement to participate in the Proposal or to assist any other individual in connection with the Proposal. Design Documents are defined as the following, the Process Definition Document (as defined in Work Order 4 of the Master Services Agreement:
>
> Process Model—BPP (business process procedures) for level IV processes in scope-Process Flow; Business Process Requirements; Key Design Decisions; Risks; Organizational Change Matrix; Key Performance Indicators; and Technical Components.

8. Given the importance attached to including in the "fire-wall" agreement a proper definition of "Design Phase related information," as intended under article 2.4 of the SOW, we recommend that PD, in consultation with the ERP Office, review the above-quoted definition to determine whether it is sufficiently broad not only to include all Design Phase related information that should be contained within the [Company] team working on the Design Phase, but also to prevent its disclosure to other [Company] personnel preparing the proposal for the Build Phase. Thus, PD, in consultation with the ERP Office, should be satisfied that the description of "Design Phase related information" currently included in article 3 of the draft agreement transmitted by PD is sufficiently expansive to include all Design Phase related information envisaged under article 2.4 of the SOW. However, if the current definition of "Design Phase related information" is found to be too narrow (e.g., because it excludes Design Phase related information which should not be shared with the [Company] team preparing the proposal for the Build Phase), we recommend that PD, in consultation with the ERP Office, revise that definition to broaden the description of the kinds of information and deliverables that

should not be shared by the [Company] team working on the Design Phase with other [Company] personnel involved in preparing the proposal for the Build Phase.

9. Subject to our foregoing comments, we have revised the draft agreement that PD forwarded to OLA and attach hereto* a revised draft agreement for PD's consideration.

6 October 2009

(*e*) Interoffice memorandum to the Director, Procurement Division, regarding the use of the International Federation of Consulting Engineers (FIDIC) Standard Agreement for Construction Contracts in the solicitation of bids from construction contractors

Use of standard construction contracts in solicitation of bids—Necessary that contracts are consistent with policies, privileges and immunities, and financial regulations and rules of the United Nations—Standard contract by International Federation of Consulting Engineers (FIDIC) not consistent with United Nations requirements

1. This is in reference to your memorandum, dated 14 August 2009, seeking the advice of the Office of Legal Affairs (OLA) in relation to an OIOS audit recommendation, set forth in paragraph 37 of its draft report on assignment no. AC/2009/514/08, entitled "Audit on the construction of additional office facilities and improvements to conference facilities at the United Nations Office at Nairobi" (the Draft Report). Such audit recommendation, as well as paragraph 36 of the Draft Report, reads as follows:

> 36. The form of contract used to solicit bids from construction contractors has been developed by the United Nations. OIOS was advised that personnel at UNON and contractors in East Africa are not familiar with the terms and conditions of the United Nations contract and usually use the standard form of the International Federation of Consulting Engineers (FIDIC) instead of the United Nations contract. Use of this form of contract (or another international standard), would give the advantage of being better understood by contractors. It would also have been tested in arbitration or court for scenarios that may arise, given the complex nature of construction works. *The possibility of using FIDIC had been raised with, and addressed by the Office of Legal Affairs back in 2005. At that time the Office of Legal Affairs was not in favour*, but it may be worth revisiting this possibility for future projects. The World Bank uses FIDIC with additional clauses included for special circumstances, if required. (It is noteworthy that United Nations staff based in ECA, Addis Ababa also favour the use of FIDIC).
>
> 37. Recommendation: The Procurement Division in consultation with the Office of Legal Affairs should examine whether it would be acceptable to use international forms of construction contracts that are familiar to local technical staff and contractors for future construction works. (Emphasis added).

2. We note the statement by OIOS set forth in paragraph 36 of the Draft Report as follows, the "possibility of using FIDIC had been raised with, and addressed by, the Office of Legal Affairs back in 2005. At that time the Office of Legal Affairs was not in favour . . .." We have reviewed our files and note that in a memorandum from PD to the General

* Not reproduced herein.

Legal Division (GLD), dated 1 September 2004,[1] PD had forwarded to GLD a draft contract which had been prepared by the Economic Commission for Africa (ECA), using a standard FIDIC format as a base (the "Draft Contract"). The Draft Contract was intended for use in a tender that was to be issued for an ECA construction project.

3. In response to PD, in its memorandum dated 5 April 2005, GLD advised PD, *inter alia*, of the following. GLD had indicated its understanding that the Draft Contract was prepared by ECA and was based upon the form of contract used by the International Federation of Consulting Engineers (FIDIC). ECA wished to use a FIDIC-type of construction contract because, *inter alia*, it was used extensively in Africa and, more generally, on certain international government projects in Ethiopia. In this regard, GLD noted that while the FIDIC form of contract may be widely used in Africa, as is the American Institute of Architects (AIA) form of contract in the United States, these industry models do not fully meet the unique status and requirements of the Organization, and do not fully protect the interests of the Organization. Thus, a number of material provisions in the Draft Contract were not only incompatible with the status of the United Nations as an international intergovernmental organization but also with the policies of the Organization reflected in the United Nations General Conditions of Contract and other terms generally agreed upon between the United Nations and its contractors in commercial agreements, including construction contracts.

4. In its memorandum, dated 5 April 2005, GLD highlighted various examples of provisions in the Draft Contract, which GLD found objectionable, because such clauses either departed significantly from the established policies of the Organization, were contrary to the privileges and immunities of the Organization or contrary to the financial regulations and rules of the United Nations.

5. While GLD is not intimately familiar with the most recent versions of the FIDIC forms of contract,[2] we believe that any changes to the FIDIC forms of contract since 2005 would likely not have addressed the concerns raised by OLA in its memorandum of 5 April 2005. In order to provide comprehensive advice on whether the FIDIC, or any other, form of contract would be suitable for use by the United Nations, GLD would need to be provided with a copy of such forms of contract, for its review. Without having had the benefit of reviewing such forms of contract, we note that to the extent that such forms are inconsistent with the policies, regulations and/or rules of the Organization, such forms would need to be substantially modified, in order to make them appropriate to the United Nations context.

6. With regard to the statement by OIOS regarding the World Bank's use of the FIDIC forms of contract, namely, "The World Bank uses FIDIC with additional clauses included for special circumstances, if required,"[3] we understand that OIOS is referring to the Multilateral Development Bank Harmonised Edition, dated March 2006 (the Harmonised Edition). It is our understanding that the World Bank commissioned FIDIC to substantially modify the standard FIDIC forms of contract for use by the World Bank in order to develop such Harmonised Edition. GLD's cursory review of the Harmonised Edition indicates that it also

[1] Memorandum, dated 1 September 2004, is attached for convenience. *[Not reproduced herein.]*

[2] FIDIC forms of contract are proprietary to the FIDIC and are subject to payment of subscription fees, prior to being released to the subscriber.

[3] See paragraph 36 of the Draft Report.

contains a number of those provisions which had been identified by OLA in its 5 April 2005 memorandum, as being inappropriate for use by the United Nations.

7. You may wish to note the DFS has, this week, informed OLA that it is establishing a working group for the purpose of developing a set of standard form contracts for construction projects (the Working Group). OLA has been invited to nominate a representative to participate in the Working Group and we understand that, in addition to DFS, other participants will be drawn from PD and the Field Missions. We understand that the Working Group may be reviewing the FIDIC forms of contract, as well as other internationally recognized standards, when undertaking its review, for the purpose of drafting standard form construction contracts for use by field missions.

15 October 2009

(*f*) Interoffice memorandum to the Officer-in-Charge, Procurement Operations Service, Procurement Division, regarding the termination of a food rations contract

TERMINATION OF CONTRACT DUE TO TERMINATION OF MISSION MANDATE—REIMBURSEMENT OF REASONABLE COSTS INCURRED PRIOR TO RECEIPT OF NOTICE OF TERMINATION—PAYMENT FOR RATIONS IN STOCK OR IN TRANSIT ORDERED BY THE UNITED NATIONS PRIOR TO DATE OF TERMINATION

1. This is with reference to your memorandum, dated 24 February 2009, seeking our advice in connection with a claim from [Company] for reimbursement of certain costs that [Company] allegedly incurred due to the termination of a food rations contract [Contract No.] (the Contract) by the United Nations. Specifically, you request our advice as to whether [Company] is entitled to reimbursement of the sum of [Euro] representing the net book value, after depreciation, of certain items of equipment acquired by [Company] to provide services under the Contract.

2. We also refer to the various discussions between representatives of our respective Offices and the further documentation provided by the Procurement Division (PD) to assist in our review of this matter.

[. . .]

BACKGROUND

4. Based on the information and documentation provided by PD, our understanding of the background of this matter is as follows:

(i) On 21 October 2007, the United Nations and [Company] entered into the Contract for the provision of food rations, bottled water and related services in support of the United Nations Mission in Ethiopia and Eritrea (UNMEE). The Contract was for an initial term of three years from 31 August 2006 through 31 August 2009.

(ii) In February 2008, the number of UNMEE troops was reduced significantly and the remaining troops were moved to new locations within the mission area.

(iii) Between March-July 2008, various discussions took place between PD and [Company] as to how the downsizing and re-configuration of UNMEE would impact on the provision of rations under the Contract.[1]

(iv) On 16 July 2008, PD served notice terminating the Contract with effect from 31 July 2008. The termination notice was based on article 15.2 of the United Nations General Conditions of Contract (see paragraph 5 below) and requested that [Company] "cease all operations and remove all of its assets from Eritrea by 31 July 2008."

(v) On 18 July 2008, [Company] responded to the termination notice stating that it "would do its utmost to limit the United Nations' exposure to the cost of terminating this contract and will provide the United Nations these costs in due course."

(vi) In resolution 1827 (2008), dated 30 July 2008, the Security Council terminated the UNMEE mandate with effect from 31 July 2008.

(vii) On 31 November 2008, [Company] submitted a claim for [Euro] for "the United Nations' cost for terminating the [Contract] for convenience." According to the attachments to [Company]'s letter, the amount claimed represented the net book value, after depreciation, of various items of equipment acquired by [Company] to provide services under the Contract.

Analysis

5. As noted above, the termination notice served by the United Nations was based on article 15.2 of the United Nations General Conditions of Contract (attached at Annex A to the Contract), which provides as follows:

> The United Nations may terminate this Contract at any time should the mandate or the funding of [UNMEE] be curtailed or terminated, in which case the Contractor shall be reimbursed by the United Nations for *all reasonable costs incurred by the Contractor prior to receipt of such notice of termination*. (Emphasis provided).

6. The issue that arises, therefore, is whether the amount claimed by [Company] is reasonable. This issue should be considered in light of the relevant provisions of the Contract, in particular, article 16 which addresses the financial consequences of contract termination.[2] In this connection, article 16.7 of the Contract provides as follows:

> Upon the expiration or termination of this Contract, other than termination for the Contractor's material breach, the United Nations shall pay the Contractor for Reserve Rations and the Food Rations in transit or in the Contractor's warehouses that have been

[1] According to the documentation provided by PD, a number of potential options were discussed with [Company], including a possible agreed termination ("termination for convenience") of the Contract. PD has confirmed, however, that the outcome of the discussions was inconclusive.

[2] In accordance with article 23.2 of the Contract, the provisions in article 16 take priority over the United Nations General Conditions of Contract.

ordered pursuant to duly issued Requisitions. Payment shall be made according to the Food Rations prices listed in Annex D (Pricing Schedule), provided that the goods are in a satisfactory condition when delivered to the United Nations.

7. Article 16.9 of the Contract further provides that:

Upon the expiration or termination of this Contract, the Contractor shall give the United Nations and/or its successor, *the right to purchase any or all of the Equipment* owned by the Contractor and used exclusively for the performance of the services under this Contract that the Contractor desires to sell. (Emphasis provided.)

8. In accordance with article 16.7, therefore, the United Nations would have a strong basis for arguing that [Company] is only entitled to payment for rations, either in stock or in transit, which were ordered by the United Nations prior to the date of termination. We understand from PD that payment for such stocks has already been made to the Contractor. In relation to article 16.9, we further understand from PD that, with the exception of two refrigerated containers that were transferred to UNMEE, the Equipment used by [Company] to provide services under the Contract was either removed from the mission area or abandoned by the Contractor following the termination of the Contract. PD has also confirmed that the United Nations did not make any agreement, or promise any payment, in respect of the equipment prior to termination of the Contract.

Conclusion

9. Based on the information provided by PD, therefore, apart from the above-mentioned refrigerated containers, we can find no legal basis upon which [Company] would be entitled to reimbursement of the residual value of the equipment it used to provide services under the Contract. We also note that, to date, [Company] has provided no basis to substantiate its claim, either under the terms of the Contract, or otherwise. Should [Company] provide such substantiation at a future date, we would be happy to consider the matter further.

10. Insofar as the two refrigerated containers transferred to UNMEE are concerned, [Company] would *prima facie* be entitled to payment for the containers, as agreed at the time the transfer took place.

11 November 2009

4. Liability and responsibility of the United Nations

(*a*) Interoffice memorandum to the Controller, Assistant Secretary-General, Office of Programme Planning, Budgets and Accounts, regarding *ex gratia* payment to an injured civilian Haitian

PAYMENT OF *EX GRATIA* DECIDED UPON BY THE SECRETARY-GENERAL AS DEEMED NECESSARY IN THE INTEREST OF THE ORGANIZATION WHEN NO CLEAR LEGAL LIABILITY ON PART OF THE ORGANIZATION IS FOUND BY THE LEGAL COUNSEL—CIVILIAN INJURED DURING MILITARY OPERATION BETWEEN UNITED NATIONS SOLDIERS AND LOCAL GANG—NO CLEAR LEGAL LIABILITY ON PART OF THE UNITED NATIONS—IMPORTANCE OF CONVENING A BOARD OF INQUIRY IN CASES OF THIS NATURE

1. This is in response to your note addressed to the Legal Counsel, dated 10 December 2008, seeking the advice of the Office of Legal Affairs (OLA) in connection with a recommendation by the United Nations Stabilization Force in Haiti (MINUSTAH) Local Claims Review Board (LCRB) to pay [Name], a civilian Haitian national, an *ex gratia* payment of [USD].

Background

2. According to the documents attached to your note, [Name] was injured in the Cité Militaire area of Port-au-Prince, on 13 July 2006. The incident occurred while United Nations soldiers from the MINUSTAH Brazilian Battalion (BRABATT) were engaged in a military operation involving local gang members. [Name], who was apparently crossing the street at the time, was shot in the leg during an exchange of gunfire.

3. We understand that MINUSTAH did not convene a Board of Inquiry in respect of this case. Two investigations were, however, conducted by the MINUSTAH Military Force Provost Marshall (FPM) and by the MINUSTAH Special Investigation Unit (SIU).

4. In its report, dated 2 March 2007, the FPM found that [Name] "did not see where the shots came from" and that "it was not possible to recover the projectiles that hit [her]." The FPM added that "given the position occupied by the hostile forces," [Name] had most likely been shot by them. The FPM further concluded, however, that, although the MINUSTAH "acted in self-defence," "the possibility of collateral damage caused by an accidental fire can not be completely discarded."

5. In its report, dated 12 March 2007 (SIU/PAP/800/06), the SIU endorsed the conclusions of the MINUSTAH military police, confirming that "although the BRABATT troops were acting in self-defense and according to the rules, it is not possible to discard definitely the possibility of collateral damage."

6. On 26 December 2006, [Name] submitted a claim for compensation in the amount of [USD] to MINUSTAH. On 12 November 2007, she amended her claim and requested that she be sent to a country "like Cuba" to receive medical treatment for her injuries.

7. The matter was submitted to the MINUSTAH LCRB on 24 April 2008. Noting the inconclusive findings of the two MINUSTAH investigation reports, the LCRB found that, unless there was conclusive evidence that MINUSTAH was responsible for the injury sustained by [Name], the Organization would not be liable to compensate her. The LCRB decided, therefore, to defer its review of the claim, pending the advice of the MINUSTAH Legal Office as to whether the Organization's liability had been engaged.

8. The MINUSTAH Legal Office provided advice in respect of [Name]'s claim on 10 July 2008. The advice concluded that the "liability of the United Nations cannot be clearly established."

9. On 28 July 2008, the LCRB reconvened to review [Name]'s claim. During that meeting, the LCRB considered that "it continues to be unclear and inconclusive as to whether the Organization was liable or not for collateral damage and that any compensation granted would be purely on humanitarian grounds." The LCRB, taking note of the sensitive political visibility of this matter, recommended, "in the best interest of the Organization," that [USD] be paid to [Name] on an *ex gratia* basis.

10. The recommendation of the LCRB was endorsed by the MINUSTAH Chief of Mission Support and submitted to the Controller for his consideration and approval on 14 October 2008.

Legal Analysis

11. Financial regulation 5.11 provides that the "Secretary-General may make such *ex gratia* payments as are deemed to be necessary in the interest of the Organization" (ST/SGB/2003/7). In accordance with financial rule 105.12, "*[e]x gratia* payments may be made in cases where, although in the opinion of the Legal Counsel there is no clear legal liability on the part of the United Nations, payment is in the interest of the Organization . . . The approval of the Under-Secretary-General for Management is required for all *ex gratia* payments." In deciding whether an *ex gratia* payment may be made, therefore, the role of the Office of Legal Affairs is to determine whether the Organization is legally liable or not to make the payment.

12. In the present case, we note that neither of the investigations conducted by MINUSTAH in respect of this incident were able to establish whether the injury sustained by [Name] was caused by BRABATT, or by the local gang members. In the absence of evidence of BRABATT's responsibility, it is the opinion of this Office that there is no clear legal liability on the part of the United Nations to compensate [Name].

13. Should the Controller decide that it is in the interest of the Organization that an *ex gratia* payment be made to [Name], we recommend that a signed release be obtained from her before such payment is made. We would also reiterate how important it is to ensure that a Board of Inquiry is convened in cases of this nature.

29 January 2009

(*b*) Note to the Controller, Assistant Secretary-General for Programme Planning, Budget and Accounts, regarding requests for reimbursement for infrastructure installed by the European Union in Chad

Request for reimbursement for infrastructure installed in Chad by the European Union-led peacekeeping force (EUFOR) prior to transfer of military authority to the United Nations—No basis for obligation to reimburse the European Union (EU) under Security Council resolutions 1861 (2008) and 1778 (2007)—Exchange of letters and subsequent technical arrangement provide for reimbursement for infrastructure installed at N'Djamena and Abeche airports—Discussions held between the United Nations and the EU may have created an expectancy that an increased level of reimbursement would be provided, but does not amount to a legal obligation

1. This is in response to your note dated 19 March 2009, requesting the advice of the Office of Legal Affairs (OLA) in relation to the Organization's potential exposure to legal liability if it does not reimburse the European Union (EU) for the infrastructure installed by the European Union-led peacekeeping force (EUFOR) in Chad.

2. We understand that your request has arisen in the context of a request by the Department of Field Support (DFS) for reconsideration of a decision by the Office of Central

Support Services (OCSS) not to reimburse the EU for the EUFOR-installed infrastructure. We also understand that the OCSS decision was made on the basis that, pursuant to the United Nations Financial Regulations and Rules, the Organization cannot reimburse the EU for EUFOR-installed infrastructure which was provided to the United Nations not by EUFOR, but by the Government of Chad. Within this context, you have also requested OLA's advice on the interpretation of paragraph 12 of Security Council resolution 1861 (2008).

3. We have examined your request on the basis of the documentation and information made available to us on this matter. As detailed in the attached analysis, we have concluded that, in the absence of any additional express undertaking by the United Nations to reimburse the EU for infrastructure installed by EUFOR in Chad, the United Nations legal obligation to reimburse the EU for such infrastructure is limited to its obligation to contribute 25.38 percent of the cost of the infrastructural improvements effected by EUFOR at N'Djamena and Abeche airports.

Reimbursement for EUFOR-installed infrastructure in Chad

Analysis

A. Security Council resolution 1861 (2008)

1. In paragraph 12 of Security Council resolution 1861 (2008), the Security Council:

> Encourages the Governments of Chad and the Central African Republic to continue to cooperate with the United Nations and the European Union to facilitate the smooth transition from EUFOR to the United Nations military component, including the handover of all sites and infrastructure established by EUFOR to the United Nations follow-on presence;

2. This provision reflects the normal principle that host Governments will cooperate with Security Council-mandated peacekeeping operations deployed in their territories, including that host Governments will "provide. . . . such areas for headquarters, camps or other premises as may be necessary for the conduct of the United Nations peacekeeping operation's operational and administrative activities and for the accommodation of [its] members."[1] Consistent with those principles, and with its obligation to provide premises set out in the Status-of-Forces Agreement it concluded with the EU on 6 March 2008, the Government of Chad provided to EUFOR the lands required to establish the EUFOR camps, together with facilities at N'Djamena and Abeche airports. Subsequently, in anticipation of the transfer of military authority from EUFOR to the United Nations on 15 March 2009 (TOA), as authorized in paragraph 3 of Security Council resolution 1861 (2009), the Government concluded a Memorandum of Understanding with United Nations Mission in the Central African Republic and Chad (MINURCAT) in which the Government agreed that the lands upon which EUFOR had established its camps, and the EUFOR-occupied areas at N'Djamena and Abeche airports, together with related infrastructure, would be provided to MINURCAT, with effect from TOA, once those facilities had been handed back to the Government by EUFOR.

[1] Paragraph 16 of the Model Status-of-Forces Agreement (A/45/594).

3. Accordingly, based on our review of Security Council resolution 1861 (2008), we do not find any basis for concluding that this resolution infers any obligation on the part of the United Nations to reimburse EUFOR for the infrastructure it installed during its mandate.

B. Security Council Resolution 1778 (2007)

4. We understand from the attachment to your note that the basis of the EU request to be reimbursed for the infrastructure installed by EUFOR is that EUFOR allegedly installed infrastructure of longer durability than its one-year mandate, in anticipation of the subsequent United Nations-led operation envisaged in Security Council resolution 1778 (2007).

5. Based on our review of Security Council resolution 1778 (2007), we find no basis for concluding that the Security Council requested the EU Mission to install infrastructure in excess of its own requirements, or that the Security Council intended to give rise to any legal responsibility on the part of the United Nations to reimburse EUFOR for the infrastructure it installed during its mandate.

C. Agreements between the United Nations and the EU

6. The arrangements for cooperation between the EU and the United Nations relating to Chad and the Central African Republic are set out in an Exchange of Letters concluded between the Secretary-General and the High Representative for the Common Foreign and Security Policy of the EU, in March 2008 (the EoL). The EoL provides that EUFOR and MINURCAT would provide mutual logistics support to each other, on a cost reimbursement basis, including "costs incurred by [EUFOR] to fulfill MINURCAT operational requirements, including investment cost for airports, airstrips and [EUFOR] camps, running costs and airport services." The EoL further provides that the detailed modalities for the provision of such mutual logistics support and "for a possible hand-over of infrastructures after the end of [the EUFOR] mandate" would be set out in subsequent technical arrangements to be concluded between EUFOR and MINURCAT.

7. The Technical Arrangement (TA) concluded between the United Nations and EUFOR in July 2008 provides that the United Nations commitment to reimburse EUFOR for infrastructure is limited to a 25.38 percent contribution towards the cost of infrastructural improvements carried out by EUFOR at N'Djamena and Abeche airports. The TA does not include any obligation on the part of the United Nations to reimburse EUFOR for infrastructure it installed at any other location. OLA is also not aware of any written task order issued by the United Nations to EUFOR pursuant to the TA to install infrastructure in any of its camps to a standard higher than that required for its own purposes in order to "fulfill MINURCAT operational requirements." Absent such a written task order, the TA provides no support for the EU assertion that it is entitled to reimbursement for the infrastructure installed by EUFOR in those other locations.

8. It is, of course, conceivable that, at the time the EoL was concluded, the parties intended that the infrastructure installed in the EUFOR camps, other than at the two airport locations, would be the subject of a separate technical arrangement. We understand, however, that no such other technical arrangement was concluded.

D. Discussions between the United Nations and the EU

9. In December 2008, in anticipation of TOA, the Organization entered into discussions with the EU/EUFOR with regard to the arrangements required to ensure an orderly transition. We understand that, during those discussions, the EU indicated that it would seek payment from the United Nations of 80% of the cost of the infrastructure installed by EUFOR. *It would appear from the draft agreement provided by the EU at that time that the infrastructure referred to included the infrastructure installed by EUFOR at N'Djamena and Abeche airports, as well as the infrastructure installed in the other EUFOR camps.*

10. In a letter to the EUFOR Operations Commander, dated 11 December 2008, the Organization stated that the EU/EUFOR proposal was under review by senior management. In his response dated 17 December 2008, the EUFOR Operations Commander noted that the EU proposal was under review, "in particular the depreciation rate." Noting that any agreement reached would require approval by the EU member States, the EUFOR Operations Commander proposed sending a financial team to United Nations Headquarters early in January 2008 "to discuss the issue and define the procedures to come to an agreed settlement."

11. Between 19 and 23 January 2009, a number of working level meetings were held with the visiting EU delegation to discuss various issues relating to the transition. Based on the account of those meetings provided by your Office, it would appear that a number of 'offers' or 'scenarios' as to the potential level of United Nations reimbursement for the infrastructure in the EUFOR camp sites and at N'Djamena and Abeche airports were presented to the EU delegation. No agreement was reached, however, and at the conclusion of the discussions, the EU delegation requested the United Nations to provide its position in writing so that it could be discussed with the EU management. OLA is not aware whether this was done.

12. Whilst it could be argued that by entering into further discussions as to the level of reimbursement the United Nations might potentially pay for the infrastructure installed by EUFOR, the Organization may have created an expectancy on the part of the EU that an increased level of reimbursement would be provided, such expectancy does not, in our view, amount to a legal obligation. In this connection, the extent of the United Nations' commitment to reimburse the EU for the EUFOR-installed infrastructure at N'Djamena and Abeche airports is clearly set out in the TA.[2] The account of the working level meetings that took place between the United Nations and the EU delegation in January 2008 also indicates that the discussions concerning the handover of EUFOR-installed infrastructure were "subject to review by internal [United Nations] committees and approval by legislative bodies." The account of those meetings also clearly states that, at the conclusion of the discussions, no agreement had been reached.

13. Accordingly, based on the information provided by the Office of Programme Planning, Budget and Accounts (OPPBA), as well as the documentation available in OLA's records, we do not find any basis for concluding that the United Nations is legally liable to reimburse the EU for the infrastructure installed by EUFOR, either under the relevant Security Council resolutions, or as a result of any subsequent action taken by the United Nations, save to the extent expressly set out in the TA referred to in paragraph 7 above.

[2] The TA also provides that any modifications or amendments to the TA shall be in writing.

Should any additional information to support the existence of such a legal obligation become available, we would be happy to review the matter further.

26 March 2009

(*c*) Interoffice memorandum to the Director, Medical Services Division, concerning emergency response services provided to areas outside the Secretariat building

HEADQUARTERS AND SUPPLEMENTAL AGREEMENTS DO NOT COVER ALL BUILDINGS USED BY THE ORGANIZATION NOR PUBLIC AREAS IN SUCH BUILDINGS—STAFF MEMBERS ENJOY IMMUNITY FROM LEGAL PROCESS WITH REGARD TO CLAIMS BROUGHT BEFORE NATIONAL COURTS OR PROFESSIONAL BOARDS IF THE ACT WAS CARRIED OUT AS PART OF OFFICIAL FUNCTIONS, IRRESPECTIVE OF WHERE THE ACT WAS PERFORMED—DETERMINATION WHETHER THE STAFF MEMBER ACTED WITHIN OFFICIAL FUNCTIONS IS TO BE MADE BY THE SECRETARY-GENERAL ON A CASE-BY-CASE BASIS—PERSONAL LIABILITY OF STAFF MEMBER WOULD BE TRIGGERED ONLY WHEN ACTING OUTSIDE THE SCOPE OF OFFICIAL FUNCTIONS OR IN THE EVENT OF GROSS NEGLIGENCE OR OTHER VIOLATIONS OF A REGULATION, RULE OR ADMINISTRATIVE INSTRUCTION

1. This is with reference to an email message from your Division dated 14 November 2008 regarding emergency response services provided by the UN Medical Services Division (MSD) to areas outside of the United Nations Secretariat, such as the DC-1, DC-2 and DC-3 (UNICEF) buildings. In particular, MSD requested clarification on whether there are any agreements that cover emergency response services provided in such buildings, especially in the lobbies, stairways, elevators and cafeterias. We note that the MSD is concerned about the exposure of medical staff to liability when performing services in those areas.

I. Headquarters Agreement and the Headquarters District

2. Section 8 of the 1947 Agreement between the United Nations and the United States of America regarding the Headquarters of the United Nations* (hereinafter the "Headquarters Agreement") provides that "[t]he United Nations shall have the power to make regulations, operative within the headquarters district, for the purpose of establishing therein conditions in all respects necessary for the full execution of its functions. No federal, state or local law or regulation of the United States which is inconsistent with a regulation of the United Nations authorized by this section shall, to the extent of such inconsistency, be applicable within the headquarters district."

3. In accordance with this section, the General Assembly approved in its resolution 604 (VI) of 1 February 1952, Headquarters Regulation No. 2 on qualifications for professional or other special occupational services within the United Nations. This Regulation provides as follows:

> The qualifications and requirements necessary for the performance of professional or other special occupational services within the Headquarters District shall be determined by the Secretary-General; provided that, prior to authorizing medical or nursing services by any person, the Secretary-General shall ascertain that such person has been duly qualified to perform such services in his own or another country.

* United Nations, *Treaty Series*, vol. 11, p. 11.

Thus, so long as the individuals covered by this Regulation meet the qualifications and the requirements set by the Secretary-General, the corresponding United States laws remain inapplicable.

4. The Headquarters District is defined by the Headquarters Agreement and three Supplemental Agreements to the Headquarters Agreement of 1966[*] (as amended), 1969[**] and 1980.[***] We are currently negotiating a Fourth Supplemental Agreement to cover the temporary space being leased by the United Nations pursuant to the Capital Master Plan.

5. Firstly, it is important to note that not all buildings currently used by the United Nations are explicitly covered by the Headquarters and Supplemental Agreements. In particular, buildings such as the FF, DC-2 and DC-3 (UNICEF) Buildings are not covered by the Supplemental Agreements. Secondly, even where buildings have been included in the Supplemental Agreements, only the specific floors that are used by the United Nations fall within the Headquarters District. Public areas, such as stairways and elevators, are explicitly excluded. Thus, for example, the Third Supplemental Agreement provides as follows in relation to one United Nations Plaza (DC-1 Building):

> The entire third to twenty-fourth floors of the UNDC Building, located at 44th Street and 1st Avenue, New York City. Said premises shall include all offices, rooms, halls and corridors on the floors mentioned above, but shall not include any stairways and elevators giving public access to other floors.
>
> That part of the first floor of said building as indicated on the plan. Said premises shall include the interior lobby opening to 1st Avenue. Said premises shall not include any stairways or elevators giving public access to other floors.
>
> That part of the second floor of said building as indicated on the plan. Said premises shall not include any stairways or elevators giving public access to other floors.

6. Therefore, in many cases, the MSD staff might provide emergency response services in areas outside of the Headquarters District and thus, outside the scope of the aforementioned Regulations. This issue is discussed further below.

II. Claims against the United Nations staff members

(a) Before national courts

7. United Nations officials enjoy immunity "from legal process in respect of words spoken or written and all acts performed by them in their official capacity" (article V, section 18 (a) of the Convention on the Privileges and Immunities of the United Nations[****] (hereinafter the General Convention). There are currently 157 States parties to the General Convention including the United States. Accordingly, if a claim is brought against a staff member of the MSD before national courts, including United States courts, such individuals enjoy immunity so long as the act was carried out as a part of the staff member's official functions. In this regard, it is for the Secretary-General to make a determination whether the individual acted within his/her official functions. Such a determination would be made on a

---

[*] United Nations, *Treaty Series*, vol. 581, p. 362.

[**] *Ibid.*, vol. 687, p. 408.

[***] *Ibid.*, vol. 1207, p. 304.

[****] *Ibid.*, vol. 1, p. 15, and vol. 90, p. 327 (corrigendum to vol. 1).

case-by-case basis. In order to facilitate such a determination, the MSD may wish to set out a broad policy of how and when trained staff should provide emergency medical services. Such a policy should attempt to capture all cases, in particular, grey areas such as those where a medically trained staff member who is not certified in the United States provides emergency response services to a non-staff member outside of the Headquarters District. In order to determine the implications of providing such services and the Organization's exposure to liability in these grey areas, we would suggest obtaining advice on local law, in particular, as it relates to "good Samaritan" responses. This Office is not in a position to provide advice on national law regarding this issue. However, the Organization could engage outside counsel to provide such advice, and this Office would be able to assist you in this matter.

(i) Where the act is within the official functions of the staff member

8. In the event that the staff member is deemed to have acted within his/her official functions, this Office would assert the staff member's immunity from legal process through the Permanent Mission concerned unless the Secretary-General determines that "the immunity would impede the course of justice and can be waived without prejudice to the interests of the United Nations" (article V, section 20 of the General Convention).

9. Where immunity of the staff member is asserted, under article VIII, section 29 of the General Convention: "[t]he United Nations shall make provisions for appropriate modes of settlement of (a) Disputes arising out of contracts or other disputes of a private law character to which the United Nations is a party," (b) Disputes involving any official of the United Nations who by reason of his official position enjoys immunity, if immunity is not waived by the Secretary-General." Thus, in the event that the United Nations would assert the immunity of the staff member concerned before a national court, the United Nations would have an obligation under the General Convention to resolve the underlying claim. It should be stressed, however, that this would be an obligation of the Organization and not the staff member concerned. Consequently, the burden of resolving the claim and any resulting potential liability would shift from the staff member to the Organization. In such a scenario, once a claim has been resolved by the Organization, the staff member's personal responsibility would become engaged only in the event of gross negligence, pursuant to staff rule 112.3, as amended by Secretary-General's bulletin* ST/SGB/2005/1 of 1 January 2005, which provides that a staff member may be required to reimburse the United Nations either partially or in full for any financial loss suffered by the United Nations as a result of the staff member's gross negligence or of his or her having violated any regulation, rule or administrative instruction.[1]

---

* For information on Secretary-General's bulletins, see note under section 1 of chapter V A, above.

[1] Administrative instruction ST/AI/2004/3 of 29 September 2004 on "Financial responsibility of staff members for gross negligence," defines the conditions for implementing, *inter alia*, Staff Rule 112.3 and Financial Rule 101.2. Section 1.2 of ST/AI/2004/3 stipulates that the provisions of ST/AI/2004/3 are based on the Organization's established policy to maintain a clear distinction between:

> (a) instances where a financial loss suffered by the Organization results from an *inadvertent error, oversight or simple negligence, or inability to foresee* the negative consequences of a chosen course of action, in which *case no financial recovery against staff members shall be undertaken* and any deficiencies on the part of the officials involved shall be addressed through performance management mechanisms; and
>
> (b) instances where a financial loss results from *gross negligence*, as defined in Section 1.3 of [ST/AI/2004/3] (emphasis added).

10. Where immunity is waived by the Secretary-General, in accordance with article V, section 20 of the General Convention, the concerned staff member would personally have to answer the claim before the national court. We recall in this regard that under article V, section 21 of the General Convention, the United Nations has an obligation to "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 [article V of the General Convention]."

(ii) Where the act is outside the official functions of the staff member

11. An example of such a scenario would be a case where a staff member provides emergency medical services to a neighbor in his/her building in the middle of the night. In such cases, immunity would not apply and the staff member concerned would have to personally answer the claim before the national courts. It is important to note in this regard that it is still for the Secretary-General to determine whether the act concerned relates to the staff member's official functions and to notify the relevant authorities accordingly.

(b) Disciplinary action before professional boards

12. Legal process has been interpreted by the United Nations to include "legal process before national authorities, whether judicial, administrative or executive functions according to national law" (see page 224 of the Practice of the United Nations, the Specialized Agencies, and the International Atomic Energy Agency concerning their Status, Privileges and Immunities: Study prepared by the Secretariat. (A/CN.4/L.118 and Add. 1), 1967 Yearbook of the International Law Commission Vol. II). Accordingly, if a disciplinary action is commenced against a staff member of the MSD before a professional board, such as a medical board, immunity from legal process would apply in the same manner as stated above with regard to cases before national courts. However, as a staff member, the concerned individual is subject to the Staff Regulations and Rules, including the disciplinary measures contained therein.

III. Conclusion

13. United Nations staff members enjoy immunity from legal process with regard to claims brought before national courts or professional boards if the act in question was carried out as a part of their official functions, irrespective of where this act was performed, i.e. inside or outside the Headquarters District. The personal liability of the staff member would be triggered only in the event that he/she was acting outside the scope of his/her official functions or in the event of gross negligence or other violations of a regulation, rule or administrative instruction.

24 April 2009

(*d*) Note to the Controller, Assistant Secretary-General, Office of Programme Planning, Budgets and Accounts, regarding a claim for damage to property situated in Monserrado County, Liberia

CLAIM BY LESSOR FOR DAMAGE TO PROPERTY LEASED TO UNITED NATIONS MISSION IN LIBERIA (UNMIL)—AMOUNT RECOMMENDED TO BE PAID EXCEEDS FINANCIAL AUTHORITY DELEGATED TO UNMIL—UNMIL LIABLE TO COMPENSATE COSTS FOR REPLACEMENT AND INSTALLATION OF DAMAGED ITEMS TO THE EXTENT NOT ATTRIBUTABLE TO WEAR AND TEAR—COMPENSATION TO BE PAID TO THE CLAIMANT ONLY UPON SIGNATURE OF A SETTLEMENT AND RELEASE AGREEMENT

1. This is with reference to your note dated 26 February 2009, requesting the advice of the Office of Legal Affairs (OLA) in connection with a recommendation by the United Nations Mission in Liberia (UNMIL) to pay [USD] to [Name 1] in settlement of his claim for property damages to the Tweh Farm compound in Monserrado County, Liberia.

2. With your note you have provided us a copy of the minutes of the meeting of 10 December 2008 of the UNMIL Local Claims Review Board (LCRB), with the following supporting documentation: (i) a memorandum dated 18 November 2008 from the Deputy-Supervisor of the Security and Investigation Unit (SIU) to the Director of Mission Support (DMS) and related SIU investigation report dated 16 November; (ii) the "Third party uninsured claim form" submitted by the claimant on 14 July 2008; and (iii) the Lease Agreement between UNMIL and [Name 2] , [Name 3] and [Name 1] dated 20 October 2005, and two amendments.

3. We subsequently requested, and received the following additional documents from UNMIL (i) the Property Handover Report dated 20 June 2008; and (ii) an itemized list of the damages submitted by [Name 1] in support of his claim.

A. Background

4. Based on the documents provided to us, our understanding of the facts is as follows. On 20 October 2005, UNMIL entered into a lease with [Name 2], [Name 3] and [Name 1] for the lease of a compound with 12 bungalows known as the "Tweh Farm" located in Boshrod Island, Liberia, for the period from 1 December 2005 to 30 November 2007 (the Lease). The premises were used to accommodate UNMIL military personnel from the UNMIL [State] Battalion. The Lease was subsequently extended for an additional four-month period until 31 March 2008. By the time of expiration of the first extension, 90% of the troops accommodated on the premises had been relocated to another location. On 1 April 2008, the parties agreed to a further extension of the Lease until 30 June 2008 to allow UNMIL to remove all UNMIL equipment from the premises. 10% of the [UNMIL Battalion] troops remained on the premises to guard the UNMIL equipment.

5. On 19 June 2008, the parties conducted a joint inspection and hand-over of the premises. The property handover report signed by UNMIL and [Name 1] states, *inter alia*, the following:

a. Damages to the premises and missing items

The property is presently in good condition however, the premises revealed minor holes on the wall (from removing UNMIL assets-ACs), a damage kerb/road which could have happen[ed] as a result of vehicular traffic. There are minor damages and missing items

> on bungalows 1 through 9 (2 fa[u]cets, 18 wardrobe sliding doors and 14 window slide glass) while bungalows 10 through 12 seem to carry major damages and it includes the following; twenty-eight wooden doors (28 pcs), complete bathrooms sets (6 pcs), electrical wiring, window glasses (18 pcs slides), electrical sockets are all considered missing or completely damaged.
>
> b. Fixed and removable furniture
>
> No portions/parts of the premises occupied by the troops were furnished. The fixed furniture (kitchen cabinets and wardrobes) [and] revealed kitchen sink (3 sets), [are] completely damaged on bungalows 10 through 12.

6. On 14 July 2008, [Name 1] submitted, on behalf of himself and the other family members named in the Lease, a claim for compensation in an aggregate amount of [USD] which included for each of the 12 bungalows located on the premises an itemized list of the alleged damaged or missing items and the estimated cost of their replacement. The claim also included 30% of these estimated replacement costs for labour, 10% for transport, and 10% for contingency.

7. Beginning of August 2008, SIU was requested to conduct an investigation to ascertain the cause and extent of the damages. In its report dated 16 November 2008, SIU found, *inter alia*:

> That, during this inspection [of 20 June 2008] it was discovered that Houses #10, 11 and 12 were already being vandalised apart from the other houses.
>
> That, the theft and damages to the houses were done when the compound was still partly occupied by the remaining [UNMIL Battalion] troops.
>
> That, the houses being vandalised are situated next to the river with no security fence. Only rows of concertina wires are being placed on the river side to cover for the open area with no Security guards. . . .

SIU concluded, *inter alia*, that "Houses # 10, 11 and 12 were vandalized by unknown persons as there is sufficient evidence to prove that unlawful entry(ies) have been made, whereas the rest of the houses [Houses #1–9], damages could or may have been done by the [UNMIL Battalion] troops during the tenure of legal occupancy."

8. The claim was reviewed by the LCRB on 10 December 2008. Based on the findings of the SIU report, the LCRB found that (i) "since UNMIL had officially handed over the property back to the [Name 1] family, the onus of guarding the premises was on the claimant"; (ii) "since the SIU report established that damage to houses 1 to 9 was due to wear and tear as a result of occupancy by [UNMIL Battalion] peacekeepers, then UNMIL is not responsible for repair costs pertaining to those houses"; and (iii) "since the major damage to houses 10 to 12 was observed during the inspection of the premises prior to its hand over, then it is justified to consider it as constituting the claim." The LCRB recommended that the [Name 1] family be paid [USD] as compensation for the damages to the premises.

9. The LCRB recommendation was endorsed by the CMS/UNMIL on 15 December 2008. Since the amount of compensation that UNMIL recommended be paid to the claimant exceeds the financial authority delegated to the Mission for the settlement of third party claims, the claim has been forwarded to Headquarters for further review and approval by your Office.

B. Legal analysis

10. According to the terms of the Lease, "UNMIL shall take good care of the demised Premises and the fixtures and appurtenances therein reasonable wear and tear excepted." (See Lease, article 3).

11. At the hand-over of the Tweh Farm compound to [Name 1], the parties undertook a joint inspection of the premises during which "minor damages" in bungalows 1 through 9 and "major damages" in bungalows 10 through 12 were observed (see paragraph 5 above). Accordingly, UNMIL is responsible to compensate the claimant for such damages to the extent the damages have not been caused by wear and tear.

12. *Bungalows 1 through 9*: The LCRB has based its recommendation not to compensate the claimant for the damages to bungalows 1 through 9 on the SIU finding that those damages had been incurred due to wear and tear. We do not agree with this recommendation for the following reasons. Firstly, SIU did not arrive at such a finding, and secondly, the damages (on 2 faucets, 18 wardrobe sliding doors and 14 window slide glasses) listed in the property handover report, albeit "minor," do not appear to be of the type that would normally be caused by wear and tear. From a review of the itemized lists for bungalows 1 through 9 submitted by [Name 1] in support of his claim, it would appear possible to identify most if not all of the items listed in the property handover report. Accordingly, we recommend that UNMIL Engineering be requested to review the items on the property handover list and assess whether or not such items fall under wear and tear. Subject to the UNMIL/Engineering assessment, the claimant should be compensated for the replacement and installation costs of the items listed in the property handover report that are not attributable to fair wear and tear.

13. *Bungalows 10 through 12*: According to the property handover report, there were major damages to 28 wooden doors, 18 window slide glasses, 6 complete bathrooms sets, 3 sets of kitchen cabinets, 3 sets of kitchen sinks, 3 sets of wardrobes, the electrical wiring and the electrical sockets in bungalows 10 through 12 for which the claimant is entitled to be compensated. The LCRB recommended that he be paid a total of [USD] in compensation of those damages. While we generally agree with the methodology applied by the LCRB in determining which items are compensable (e.g. the exclusion of repairs to the roof, ceilings and floors), it would appear that some errors have occurred in the arithmetic. Subject to correction of those errors, we agree with the LCRB recommendation in respect of bungalows 10 through 12.

14. *50% overhead on estimated replacement cost*: We note that in [Name 1]'s claim an overhead of (i) 30% of the estimated replacement cost for the lost or damaged items was allocated to labor; (ii) 10% to transport; and (ii) 10% to contingencies. We recommend that the advice of UNMIL Engineering be sought to determine whether this assessment is reasonable.

C. Recommendations

15. We recommend that the claim be referred back to UNMIL for review and settlement in light of our forgoing analysis and comments. We also recommend that the compensation be paid to the claimant only upon signature of a settlement and release agreement by all of the lessors named in the Lease. Alternatively, the settlement and release

agreement could be signed by [Name 1] on behalf of the two other family members named in the Lease on presentation of a valid power of attorney.

16. On a final note, we recommend that cases involving contractual issues, such as the present case, be reviewed by the Mission Legal Office before they are presented to the LCRB.

26 June 2009

(*e*) Interoffice memorandum to the Chief of NGO Relations, Department of Public Information (DPI), regarding a draft letter of agreement between the United Nations and the NGO/DPI Executive Committee concerning transfer of funds for the organization of the 62nd Annual DPI/NGO Conference

Organization of the 62nd Annual DPI/NGO Conference—Liability for claims—United Nations collaboration with an entity that does not have sufficient assets or that does not carry adequate insurance coverage exposes the Organization to the risk of financial liabilities for third-party claims

1. I refer to an e-mail message of 1 July 2009, from your Office, requesting the Office of Legal Affairs (OLA) to attend a meeting with representatives of the Executive Committee of Non-Governmental Organizations Associated with the United Nations Department of Public Information (NGO/DPI Executive Committee), concerning a draft letter of agreement between the United Nations and the NGO/DPI Executive Committee, in respect of the parties' collaboration for the organization of the 62nd Annual DPI/NGO Conference scheduled to take place in Mexico from 9 to 11 September 2009 (the draft LoA). Pursuant to your Office's request, on 8 July 2008, members of [the General Legal Division] attended a meeting with members of your office and representatives of the NGO/DPI Executive Committee, including its Executive Director and the legal adviser to discuss the draft LoA, in particular paragraph 6 thereof on "Liability for claims." I also refer to OLA's memoranda to you dated 9 June and 9 July 2008, concerning a draft LoA with the NGO/DPI Executive Committee for the 61st Annual DPI/NGO Conference that took place in Paris in September 2008 (the 2008 LoA).

2. As requested and discussed at the meeting of 8 July 2009, we have reviewed the revised paragraph 6 of the draft LoA, submitted by the NGO/DPI Executive Committee, and we set forth a further, revised text in the attached revised draft LoA in the track change format.* I believe that our suggestions are self-explanatory, and the revised text reflects the outcome of the meeting of 8 July. I recommend that, after a review of the revised draft LoA by your Office, it be forwarded to the NGO/DPI Executive Committee for comments.

3. In this connection, OLA was informed at the meeting that the clause on "Liability for claims" had not been included in the signed text of the 2008 LoA, and a copy of the signed text without the liability clause was shown to the OLA representatives at the meeting. We note that the draft of the 2008 LoA that was cleared by OLA and by the

* Not reproduced herein.

Controller's Office last year included a liability clause. Therefore, it is unclear what might have transpired in respect of the signed text of the 2008 LoA.[1]

4. In addition, as a general comment, we understand that the NGO/DPI Executive Committee currently does not maintain any liability insurance to cover third-party claims that may arise out of its activities, including the activities of its officers and directors. We understand, however, that the NGO/DPI Executive Committee is reviewing this issue with a view to obtaining such insurance although, as it appears, the insurance may not be in place in time for the upcoming Conference in Mexico. As we mentioned after the meeting, we consider that collaborating with an entity that does not have sufficient assets or that does not carry adequate insurance coverage exposes the Organization to the risk of financial liabilities should third-party claims be brought against the entity and the United Nations in connection with the parties' collaboration. Therefore, it is crucial that the NGO/DPI Executive Committee procure and maintain all necessary insurance in respect of its activities, including those of its officers and directors, and we urge DPI to request the NGO/DPI Executive Committee to expedite its efforts to obtain such insurance.

5. We note that the draft LoA requires the Controller's clearance before it can be signed. Finally, we wish to reiterate our recommendation to conclude a relationship agreement with the NGO/DPI Executive Committee, clarifying its role and responsibilities *vis-à-vis* the Organization (see paragraph 6 of our memorandum of 9 June 2008).

10 July 2009

(*f*) Interoffice memorandum to the Controller, Assistant Secretary-General for Programme Planning, Budget and Accounts, concerning a claim for compensation for damages to a vehicle owned by the Permanent Mission of [State] to the United Nations

DAMAGE TO VEHICLE OWNED BY PERMANENT MISSION OF A MEMBER STATE TO THE UNITED NATIONS ATTRIBUTABLE TO ACTS OR OMISSIONS OF SECURITY AND SAFETY OFFICER—COST OF ESTIMATION BY INDEPENDENT APPRAISER WOULD BE DISPROPORTIONATE TO THE ACTUAL COST CHARGED FOR REPAIR—RECOMMENDATION THAT ORGANIZATION SETTLE BY PAYING COSTS FOR REPARATION OF VEHICLE

ISSUE AND SUMMARY OF RECOMMENDATION

1. This refers to the memorandum of 19 June 2009 from the Security and Safety Service (SSS) to the Office of Legal Affairs (OLA). (. . .) That memorandum concerned a request by the Permanent Mission of [State] to the United Nations (the Mission) for compensation for damages sustained by the above-referenced vehicle as it was entering the United Nations compound at the entrance on First Avenue and 43rd Street.

2. Section 3 of the Secretary-General's bulletin* ST/SGB/230 on the "Resolution of Tort Claims" provides that, "[i]f, upon its preliminary review of all the facts and circum-

[1] We noted that the paragraph numbering on page 2 of the signed 2008 LoA was not consequential to the paragraph numbering on page 1, and one paragraph appeared to be missing from page 2.

* For information on Secretary-General bulletins, see note under section 1 of chapter V A, above.

stances, [OLA] is of the view that a claim is justified and can be settled by payment of a sum not in excess of USD 5,000, it shall so report to the Controller and, subject to his approval, negotiate an appropriate settlement." That Bulletin was promulgated as part of the Organization's adoption of a self-insurance scheme for tort claims occurring on Headquarters premises.[1] Accordingly, we are forwarding this matter to you with our recommendation that the claim be settled by paying the costs of repair as assessed.

The incident

3. According to the investigation report of the SSS on this incident, on 6 February 2009, at approximately 12:25 hours, the above-referenced vehicle was damaged when entering the United Nations Headquarters premises through the entrance on First Avenue and 43rd Street. The investigation report states that the driver in question stopped to be searched and that after the vehicle was searched, it was allowed access onto the United Nations premises. While proceeding on to the United Nations premises, the arm barrier which at that time was in the raised position came down, collided with the vehicle, and caused damage to the windshield and roof of the vehicle. The investigation report determined that the accident occurred as a result of human error on the part of the Security and Safety Officers assigned to the post of that entrance.

4. Based on the foregoing, the damage to the Mission's vehicle does not appear to have been caused by the fault of the driver. Rather, the facts, as set forth in the investigation report, indicate that the cause of the damage is most likely attributable to the acts or omissions of the Security and Safety Officers who were assigned to the post at the time of the incident because they failed to follow standard operating procedures. Accordingly, based on the reported facts, if this matter were to proceed to an appropriate mode of settlement, such as one involving a neutral, third-party arbitrator, it would likely be determined that the Organization has an obligation to compensate the Mission for the damage caused to its vehicle.

Claim for compensation by the Mission

5. According to an invoice, dated 11 February 2009, and issued by [Company], a copy of which was enclosed with the 19 June 2009 memorandum from SSS to OLA, the repairs to the Mission's vehicle in respect of the damages resulting from this incident consisted of the installation of windshield and amounted to [USD]. That invoice also contains a stamp stating that the amount was fully paid on 11 February 2009.

6. Given the Organization's self-insurance scheme and the difficulty in determining the extent of damages to the vehicle or of entering into arrangements for its repair, the normal practice in these matters would be to compensate the Mission based on an estimated cost of repair prepared by an independent appraiser. In this case, however, the vehicle was already repaired and the cost for such repairs has been paid by the Mission. If the Mission now were to be requested to submit an independent evaluation of the cost of the repair

[1] See Report of the Fifth Committee, A/41/957, 8 December 1986, paras. 22 and 23. See also General Assembly resolution 41/210 of 11 December 1986, establishing Headquarters Regulation No. 4, under the 1947 Agreement between the United Nations and the United States of America regarding the Headquarters of the United Nations. That Headquarters Regulation establishes limits on the Organization's liabilities for tort claims occurring on Headquarters premises.

carried out by [Company], it would appear that the cost of such evaluation, which would have to be borne by the Organization, would be disproportionate to the actual cost charged for the repair of the vehicle, i.e., [USD]. Accordingly, we recommend that in the present case, the actual fee charged by [Company] should be accepted *in lieu* of an estimate by an independent appraiser.

Conclusion and recommendation

7. Based on the information provided to OLA regarding this incident as described above, the Organization appears to be liable to compensate the Mission for the damages caused to the vehicle. We therefore recommend that the Organization settle this matter with the Mission by agreeing to pay the amount of [USD] for the expenses borne by the Mission to repair the vehicle as a result of the incident. Should you approve this settlement, we will prepare and forward to the Mission a General Release and Settlement Agreement along these lines.

16 September 2009

(*g*) Interoffice memorandum to the Officer-in-Charge, Procurement Operations Service, Procurement Division, regarding a dispute arising from an *en-route* deviation during the sea shipment of contingent-owned equipment from Liberia to Pakistan

Shipment of contingent-owned equipment—Increased security requirements due to piracy risk—Definition of *force majeure*—Whether event is unforeseeable depends on prevailing practices in the shipping industry at the relevant time—Contractor must provide convincing and objective evidence to substantiate assertion that requirement for vessel to deviate from planned course was unforeseeable—Allocation of costs between the parties in case of *force majeure*—Advisability of developing standard shipping contract

1. This is in response to your memorandum, dated 28 September 2009, seeking our advice in connection with a dispute between the Organization and [Company] arising from the shipment of contingent-owned equipment (COE) from Port Monrovia, Liberia, to Karachi, Pakistan. Specifically, [Company] claims reimbursement of [USD] for additional costs allegedly incurred as a result of an *en-route* deviation of the vessel due to a piracy alert.

I. Background

2. Based on the documentation provided by the Procurement Division (PD), our understanding of the facts is as follows. A Request for Proposal (RFP) for the shipment of the COE from Liberia to Pakistan was issued to potential bidders on 6 February 2009. [Company] submitted its proposal on 18 February 2009. On 20 February 2009, the United Nations informed [Company] that it would be awarded the contract (Notice of Award) setting out the following itinerary:

ETA/ETD Load port Monrovia, Liberia: 25/28 March 2009
ETA Discharge port Karachi: 22/25 April 2009
Required delivery date at door Karachi: 24/28 April 2009

3. On 19 March 2009, a purchase order was issued for the shipment showing the same itinerary. The purchase order was signed by [Company] on 10 April 2009.

4. On 2 April 2009, [Company] informed the Movement Control Section/Department of Field Support (DFS) that the Maritime Security Center Horn of Africa (MSCHOA) had issued a piracy alert advising vessels to maintain a distance of not less than 600 nautical miles from the coastline of Somalia. In its e-mail, [Company] noted that the MSCHOA alert would require the vessel to take a longer route around the east coast of Madagascar and requested advice as to "how to proceed with what appears to be a *force majeure* resulting in additional charges to the contractor for transit and bunkering of the [a]ffected ship." DFS replied to [Company] stating that it did not consider the change in the vessel's routing to be *force majeure* and that any additional costs incurred as a result of the deviation would be the responsibility of the contractor. DFS also informed [Company] that the time required for the vessel to make an additional re-fuelling stop in South Africa would be taken into consideration and that the contractual delivery date would be adjusted accordingly.

5. On 14 May 2009, [Company] submitted a claim for [USD] for four additional days sailing and additional re-fuelling costs. On 24 June 2009, PD responded informing [Company], *inter alia*, that:

> [A]s per the terms of annex A of the RFP, any delay due to causes beyond the control of the United Nations shall not be charged to the United Nations.[1] The piracy alert was not caused by the United Nations, nor is it within the control of the United Nations. In addition, the piracy situation in the Horn of Africa did not arise for the first time when the vessel [. . .] set sail, and the Contractor should have been well aware of the security situation in the region when submitting the offer. Therefore, the deviation of the vessel from the contractual agreement is not the responsibility of the United Nations.

6. Between June and September 2009, a number of meetings and e-mail exchanges took place between [Company] and PD in which the parties disputed the date(s) upon which various anti-piracy security alerts and maritime insurance advisories were issued and/or became known within the shipping industry. According to [Company], at the time it submitted its proposal, vessels were only advised to maintain a distance of 500 nautical miles from the Somali coast. The MSCHOA alert increasing the recommended distance to 600 nautical miles was not issued until after the contracted vessel had departed Liberia and constituted an event of *force majeure*. PD's position, on the other hand, was that the danger of piracy in the area was well-known before the RFP was issued and that [Company] ought to have been aware of the risk at the time it submitted its proposal. The discussions ended in an impasse. On 10 September 2009, PD received a letter from [Company]'s attorney essentially reiterating [Company]'s position as described above.

---

[1] Paragraph 19 of Annex A of the RFP provides that:

> The Contractor shall be responsible for any delays due to reasons except for *force majeure* or other occurrence of equal force and effect, including but not limited to war, civil disturbances or other hostilities, hurricanes, storms or other weather disturbances. The United Nations reserves the right to request Proposers to pay the United Nations any financial damages caused by delay or non-provision of ships, trucks and/or rail cars. Any delay generating detention charges to be paid by the United Nations must be justified by written explanation, duly certified by the authorized United Nations official. *Any delay due to causes beyond the control of the United Nations shall not be charged to the United Nations*. (Emphasis provided.)

II. Analysis

7. The main issues to be addressed are: (i) whether the MSCHOA piracy alert advising ships to maintain a distance of 600 miles from the east coast of Somalia constituted *force majeure*; and (ii) if so, how the additional costs arising from the vessel's deviation should be allocated between the parties.

8. Article 15.3 of the United Nations General Conditions of Contract (UNGCC) attached at annexe E of the RFP, defines *force majeure* as follows:

"any unforeseeable and irresistible act of nature, any act of war (whether declared or not), invasion, revolution, insurrection, terrorism, or any other acts of a similar nature of force, provided that such acts arise from causes beyond the control and without the fault or negligence of the Contractor [. . . .].

9. Article 15.1 of the UNGCC further provides that:

> 15.1 In the event of and as soon as possible after the occurrence of any cause constituting *force majeure*, the affected Party shall give notice and full particulars in writing to the other Party of such occurrence or cause [. . .] Not more than fifteen (15) days following the provision of such notice of *force majeure* or other changes in condition or occurrence, the affected Party shall also submit a statement to the other Party of estimated expenditures that will likely be incurred for the duration of the change in condition or the event of *force majeure*. On receipt of the notice or notices required hereunder, the Party not affected by the occurrence of a cause constituting *force majeure* shall take such action as it reasonably considers to be appropriate or necessary in the circumstances, including the granting to the affected Party of a reasonable extension of time in which to perform any obligations under the Contract.

10. The parties do not dispute that the threat of piracy comes within the meaning of "insurrection, terrorism, or any other acts of similar nature or force" as referred to in article 15.3 of the UNGCC, nor do they dispute that the vessel acted appropriately by complying with the MSCHOA alert. For [Company] to succeed in its argument that the vessel's deviation constituted *force majeure* as defined in article 15.3 of the UNGCC, however, the contractor must show that the events that caused the vessel to deviate were unforeseeable. This is a factual matter and would depend on the prevailing practices in the shipping industry at the relevant time.

11. In this connection, rather than engaging in further exchanges as to when various anti-piracy alerts and insurance advisories were published on the internet, we suggest that PD informs [Company] that its claim cannot be considered further unless the contractor provides convincing and objective evidence to substantiate its assertion that the requirement for the vessel to deviate from its originally planned course was unforeseeable. For example, PD's request for [Company] to provide confirmation from the vessel's insurers that the originally proposed route did not breach Institute Warranty Limits would seem reasonable in the circumstances.

12. If it is determined that the vessel's deviation was due to *force majeure*, the question arises as to how the additional costs incurred as a result of the deviation should be allocated between the parties. In this connection, article 15.1 of the UNGCC is silent as to how additional costs should be dealt with in cases of *force majeure*. PD's contention, based on annex A of the RFP, that the additional costs should be borne by the contractor (see paragraph 5 above) is not, however, convincing in the overall context of the contract

documents. Whilst it is impossible to predict how the issue of the allocation of the additional costs would be decided should the matter go to arbitration, it is likely that the United Nations' costs in such arbitration would exceed the amount that is in dispute.

III. Conclusion

13. Accordingly, we recommend that PD inform [Company] that the United Nations would be prepared to reconsider its claim provided the contractor provides cogent and objective evidence to substantiate its assertion that the events that caused the vessel to deviate, *i.e.* heightened security measures due to pirate activity, were unforeseeable. We further recommend that, if such evidence is provided by the contractor, an equitable split of the additional costs be negotiated between the parties.

14. Finally, as previously advised, we recommend that the contract documents used in cases of this nature be reviewed and the various inconsistencies be removed. It would also be advisable to develop a standard shipping contract, encapsulating the entire agreement between the parties. As expressed on previous occasions, this Office would be happy to review such revised contractual documents, if requested to do so.

11 December 2009

(*h*) Note to the Controller, Assistant Secretary-General for Programme Planning, Budget and Accounts, regarding a third-party claim for accommodation by United Nations Operation in Côte d'Ivoire

Request for compensation for occupation of motel by members of United Nations mission—Recommended amount exceeding financial authority delegated to mission—Provision under Status-of-Forces of Agreement that accommodation be provided to United Nations forces by the Government free of charge—Compensation firstly to be sought from local authorities—Compensation to be provided to the claimant reserving the United Nations mission's right to claim reimbursement from the Government

1. This is with reference to your note, dated 18 October 2009, seeking the advice of the Office of Legal Affairs (OLA) in connection with a recommendation by United Nations Operation in Côte d'Ivoire (UNOCI) to pay to the owner of the [Motel Name] (the Motel), Côte d'Ivoire, the sum of [CFA] for the alleged occupation of the Motel by members of the UNOCI [State] contingent. As the recommended amount exceeds the financial authority delegated to UNOCI for the settlement of third party claims, the Mission has forwarded the claim to the Controller for approval.

2. Attached to your note, you have provided the minutes of the UNOCI Local Claims Review Board (LCRB), together with various supporting documentation.

Background

3. Based on the documentation provided, we understand that the background to this matter is as follows. On 2 December 2003, the Motel in Zuenoula, Côte d'Ivoire, was requisitioned by the Local Prefect and placed at the disposal of the MICECI (Economic Community of West African States (ECOWAS) Mission in Côte d'Ivoire) [State] contingent

for the duration of the MICECI mandate. The Motel was used as accommodation by the contingent command party, while the main bulk of the contingent was located in a nearby tented camp. Unbeknownst to the UNOCI administration, this arrangement continued after the MICECI (ECOWAS) [State] troops "re-hatted" to UNOCI on 4 April 2004.

4. On 25 July 2005, the owner of the Motel, [Name], submitted a claim for the occupation of his Motel by the MICECI (ECOWAS) [State] troops from 22 April 2003 to 3 April 2004 and by the UNOCI [State] troops from 4 April 2004 to 23 October 2004. The amount claimed was [CFA].

5. The claim was reviewed by the UNOCI LCRB at its meeting on 26 November 2008. The LCRB noted, *inter alia*, that the Motel had been placed at the disposal of the MICEI (ECOWAS) contingent by the local authorities and that the Status-of-Forces Agreement (SOFA) concluded between the United Nations and the Government of Cote d'Ivoire on 29 June 2004 provides that the Government would provide premises to UNOCI, free of charge. In the circumstances, the LCRB recommended that the claimant should first seek compensation for the occupation of the Motel from the local authorities.

6. Noting that the claim may ultimately have to be settled by UNOCI, however, the LCRB further noted that:

6.1 The portion of the claim relating to the period of the MICECI (ECOWAS) mandate (i.e. from 22 April 2003 to 3 April 2004) was not receivable by the Organization;

6.2 As regards the occupation of the Motel during the UNOCI mandate (from 4 April 2004 to 23 October 2004), the daily room rate of [CFA] claimed by the claimant was acceptable; and

6.3 Although the command party of the UNOCI [State] contingent (approximately 20 rooms) had been accommodated in the Motel, it appeared from the information provided to the Board that the Government of [State] had received United Nations reimbursement for COE-provided tented accommodation for the full strength of the [State] contingent during the period in question.

7. The LCRB recommended therefore that the claimant be compensated in the sum of [CFA], based on the occupation of 20 Motel rooms by members of the UNOCI [State] contingent between 4 April and 23 October 2004 (203 days) at the rate of [CFA] per day. The LCRB further recommended that the amount of the settlement be recovered from the Government of [State]. The LCRB recommendation was endorsed by the CMS/UNOCI on 16 December 2008.

Legal Analysis

8. Based on the information provided, we agree that this claim should be referred to the host Government for appropriate action consistent with the Government's obligation under the SOFA to provide premises to UNOCI free of charge. As the LCRB minutes and supporting documentation forwarded to us do not provide any information as to what, if any, action UNOCI has taken in this regard, however, we recommend that the claim be returned to UNOCI for clarification of this issue and, if applicable, further action as described above. We further recommend that the claimant be informed accordingly.

9. In the event that the host Government fails to take appropriate action to dispose of the claim, the Government should be informed that the settlement of the claim by UNOCI directly with the claimant shall be concluded under protest and without prejudice

to the Government's obligation to provide premises, free of charge, pursuant to the SOFA. The Government should also be informed that UNOCI reserves the right to claim reimbursement from the Government for any settlement amount paid to the claimant.

10. Subject to our comments in paragraphs 8 and 9 above, we agree with the UNOCI recommendation that the claimant be compensated in the sum of [CFA] for the occupation of the Motel by members of the UNOCI [State] contingent from 4 April to 23 October 2004. We also agree that the amount of such settlement be recovered from the Government of [State].

30 December 2009

5. Other issues relating to peacekeeping operations

(*a*) Interoffice memorandum to the Office of Military Affairs, Department of Peacekeeping Operations, regarding a request to award the United Nations Medal to national support element personnel under the [State] contingent in the United Nations Mission in Sudan

Award of the United Nations Medal to military personnel in the service of the United Nations—National support elements personnel considered to be in service of their national Governments—To award United Nations Medal to national support element personnel is not consistent with established policy

1. This is in response to your memorandum addressed to the Legal Counsel, dated 20 January 2009, seeking the advice of the Office of Legal Affairs (OLA) in connection with a request from the Permanent Mission of [State] to the United Nations for the award of the United Nations Medal to national support element (NSE) personnel serving, or who have served with, the Canadian contingent in the United Nations Mission in Sudan (UNMIS).

2. As noted in your memorandum, the Regulations for the United Nations Medal (Regulations) provide that the United Nations Medal may be awarded "to military personnel who are or have been in the service of the United Nations."[1] Responsibility for implementing the Regulations has been delegated to the Under-Secretary-General for Peacekeeping Operations.

3. We understand from the attachments to your memorandum that, in accordance with Department of Peacekeeping Operations (DPKO) policy, in order to qualify for the United Nations Medal, military personnel (and with effect from 1994 civilian police personnel) must serve the requisite qualifying period "under the operational or tactical control of the United Nations." [2] We further understand, however, that NSE personnel are deployed to peacekeeping operations to perform national functions and are, therefore, considered to be in the service of their national Governments. We also understand that previous requests by Member States for the award of United Nations Medals to NSE personnel have been denied on the basis that such personnel are a national responsibility.

[1] ST/SGB/119 of 30 July 1959 and ST/SGB/119/Add.1 of October 1963.

[2] See DPKO Code Cable 3797 to all peacekeeping missions, dated 16 November 1994.

4. In light of the above, the award of the United Nations Medal to the [State] NSE personnel in UNMIS does not seem to be consistent with the established policy of DPKO.

7 April 2009

6. Treaty law

(*a*) Interoffice memorandum to the Executive Secretary of the United Nations Convention to Combat Desertification Secretariat regarding questions posed by the Joint Inspection Unit

A mandate specified in a treaty can only be modified by amendment procedures contained in that treaty—Amendment procedures provided for under the 1969 Vienna Convention on the Law of Treaties—Authority of State parties to interpret text of treaty including the scope of its mandate—Subsidiary bodies established under a convention—Additional functions may be assigned to the Global Mechanism under the United Nations Convention to Combat Desertification—Legal personality of an international entity—Capacity of an international organization to conclude treaties is governed by the rules of that organization—Global Mechanism as a subsidiary body has not been entrusted with the legal personality to enter into legally binding agreements—Managing Director of the Global Mechanism is able to enter into legally binding agreements if this is within the authority delegated by the President of IFAD in accordance with IFAD's Rules and Regulations—Determination whether an instrument, whatever its designation, is a treaty is to be done on the basis of the intention of the parties

1. This is with reference to your memorandum requesting advice on a number of questions that the Joint Inspection Unit has posed in relation to its assessment of the Global Mechanism of the United Nations Convention to Combat Desertification[*] (hereinafter the Convention). . . .

(i) Mandate of the Convention

2. In response to your question regarding the mandate of the Convention and decisions rendered by the Conference of the Parties (COP), and possible overlaps, it should be recalled that the mandate as specified in a treaty or a convention may only be modified by the amendment procedures contained in the treaty. In this regard, article 30 of the Convention outlines the procedure for adopting amendments to the Convention. Furthermore, part IV of the 1969 Vienna Convention on the Law of Treaties[**] provides the rules on amendment and modification of treaties.

3. We also note that it is a matter for the States parties to a treaty to interpret the text, including the scope of the mandate. Accordingly, the COP would be the authoritative body to interpret the mandate and decide on the scope of the mandate as well as to determine the effect of its decisions, including decision 3/COP.8 on "The 10-year strategic plan

[*] United Nations, *Treaty Series*, vol. 1954, p. 3.

[**] *Ibid.*, vol. 1155, p. 331.

and framework to enhance the implementation of the Convention." In this regard, we are not aware of any dissenting view by a State party that this decision was not in accordance with the original mandate as specified in the Convention.

(II) Status of the Global Mechanism

4. Article 21, paragraph 4, of the Convention provides for the establishment of the Global Mechanism and article 23 provides for the establishment of the Permanent Secretariat. Accordingly, both the Global Mechanism and Secretariat are subsidiary bodies (or "treaty bodies") properly established by the Convention.

(III) Article 21 of the Convention

5. With regard to your query as to whether the words "*inter alia*" in article 21, paragraph 5, of the Convention allows the possibility of additional functions to be assigned to the Global Mechanism, we are of the view that it does. In this regard, we note that this paragraph provides that the COP and "the organization it has identified shall agree upon modalities for this Global Mechanism to ensure *inter alia* that such Mechanism. . ." This paragraph continues by listing the responsibilities of the Global Mechanism. Thus, it is for the COP and the International Fund for Agricultural Development (IFAD), which was chosen to house the Global Mechanism in decision 24/COP.1, to agree on the modalities for the Global Mechanism. We also note that in accordance with article 21, paragraph 4, the Global Mechanism is to function under the authority and guidance of the COP. Therefore, COP has the authority to add to the functions of the Global Mechanism pursuant to article 21, paragraph 5. In this regard, please also refer to our comments in paragraph 3 above.

(IV) The capacity of the Global Mechanism to enter into legally binding agreements

6. An international entity has legal personality if, in accordance with its constituent instrument, it is established as an international organization subject to international law. Under subparagraph (i) of article I of the Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations* (hereinafter the 1986 Vienna Convention),[1] the term "international organization" is defined as an "intergovernmental organization." The legal personality of an international entity/organization and the scope of that personality are determined by the constituent instrument creating the organization. Through its constituent instrument, an international entity/organization has implied powers to carry out its purposes and duties and, thus, may have the legal capacity to enter into treaties, contracts, acquire and dispose of property, be a party to judicial proceedings. The International Court of Justice (ICJ) in the 1949 advisory opinion *Reparation for Injuries Suffered in the Service of the United Nations* reaffirmed that international entities/organizations would not be able to carry out the intentions of their founders if such organizations were devoid of international personality.

---

* A/CONF.129/15.

[1] While the 1986 Vienna Convention has not yet entered into force, its provisions are instructive on the position of international law on this question.

7. The 1986 Vienna Convention provides in article 6 that the capacity of an international organization to conclude treaties is governed by the rules of that organization. Under article 2 of the Convention the term "rules of the organization" means, in particular, the constituent instruments, decisions and resolutions adopted in accordance with them, and established practice of the organization.

8. In the light of the foregoing, for an international entity to have the capacity to enter into legally binding agreements/arrangements, that entity should be established either as an international organization, with its own legal personality, or as a subsidiary body of an international organization or organizations. In the latter case a decision on the establishment of a subsidiary body should indicate that this body is entrusted by the parent organization or organizations with the legal capacity to enter into legally binding arrangements within its competence.

9. As noted in paragraph 4 above, the Global Mechanism and Secretariat are subsidiary bodies established by the Convention. Article 21 of the Convention which established the Global Mechanism (or any other provision in the Convention) does not entrust the Global Mechanism with the capacity to enter independently into legally binding agreements. The COP, which gives guidance and has overall authority over the Global Mechanism, has outlined the functions of the Global Mechanism in carrying out its mandate under article 21, paragraph 4, of the Convention in the annex of decision 24/COP.1 (the annex). The Global Mechanism was established "in order to increase the effectiveness and efficiency of existing financial mechanisms, [. . .] to promote actions leading to the mobilization and channeling of substantial financial resources" (preambular paragraph of the annex). Its functions mainly pertain to the identification, collection and dissemination of information; analyzing and advising on requests; the mobilization and channeling of financial resources; and promotion of action for cooperation and coordination. We note, however, that one activity under "mobilizing and chanelling financial resources" (section 4 of the annex) tasks the Global Mechanism to use "its own resources made available to it through trust fund(s) and/or equivalent arrangements established by [IFAD] for the Global Mechanism's functioning and activities, as defined in [the annex], from bilateral and multilateral sources through [IFAD] and from the budget of the Convention" (section 4 (f) of the annex).

10. Decision 10/COP.3 approved the memorandum of understanding between the COP and IFAD regarding the modalities and administrative operations of the Global Mechanism (the MOU). We note that the MOU has also been approved by the Executive Board of IFAD as well. The MOU provides that IFAD "[a]s the housing institution [. . .] will support the Global Mechanism in performing these functions in the framework of the mandate and policies of the [IFAD]" (section I) but shall have a separate identity within IFAD (section II (A)). Section II C of the MOU further provides that "[w]ith respect to the funds received by IFAD under (a), (b) and (c) [of section II of the MOU], all these amounts will be received, held and disbursed and the said accounts will be administered by [IFAD] in accordance with the rules and procedures of the [IFAD]." Section V provides that IFAD "will make appropriate arrangements to obtain supporting services from the United Nations country teams" and section VI on administrative infrastructure stipulates that the Global Mechanism "shall enjoy full access to all of the administrative infrastructure [. . .], including [. . .] personnel, financial, communications and information management services."

11. Having reviewed the MOU and the COP decisions, we are of the view that the Global Mechanism has not been entrusted with the legal personality to enter into legally binding agreements. Moreover, pursuant to the MOU, it is IFAD, as the housing institution, which has been tasked to provide services to the Global Mechanism in order to carry out its mandated activities including managing its budget, contracting on its behalf, administering its personnel, for example employment contracts etc. Accordingly, the relevant administrative and financial rules and regulations of IFAD apply to the Global Mechanism.

12. We understand that the Managing Director of the Global Mechanism (hereinafter the Managing Director), who in accordance with section II D of the MOU is nominated by the Administrator of UNDP and appointed by the President of IFAD, has certain delegated authority by the President on administrative issues. Accordingly, in our view, the Managing Director would be able to enter into a legally binding agreement if this is within the authority delegated by the President of IFAD to the Managing Director in accordance with IFAD's rules and regulations.

13. In response to your question as to whether the Global Mechanism, and in particular its Managing Director and staff at a lower level, have a legal basis to enter into memoranda of understandings and *aide-mémoires* with Governments and other partners, we note that memoranda of understandings and *aide-mémoires* are not necessarily legally binding documents. We recall that there are a number of terms commonly used in practice for instruments which fall within the definition of a "treaty" in the 1969 Vienna Convention on the Law of Treaties. The crucial question in determining whether an instrument is a treaty is whether the parties intend it to be governed by, and be legally binding under, international law, or whether the parties intend it not to be legally binding of its own force and only of political and moral weight (and therefore an arrangement of less than treaty status). An instrument which is legally binding of its own force, whatever its designation, is a treaty. Aspects of form and drafting should reflect the intended status of the document. Accordingly, the ability of the Managing Director and other representatives of the Global Mechanism to enter into such agreement depends on the delegated authority given by IFAD as well as the intent of the parties to the memoranda of understandings and *aide-mémoires*. In this regard, we would note our observations at paragraph 11 above.

16 September 2009

7. Personnel questions

(*a*) Interoffice memorandum to the Legal Adviser of the Office of the High Commissioner for Human Rights (OHCHR) concerning membership in the Human Rights Committee

Election of a United Nations staff member to the Human Rights Committee—The International Covenant on Civil and Political Rights (ICCPR) does not bar United Nations staff members from election to the Committee—Duties of staff members under staff regulation 1.2 (c), (d), (e), (f) and (o)—Role of the Committee includes publicly taking positions on whether States have complied with their human rights obligations under the ICCPR—Engaging in such activities would be inconsistent with staff member's status as an international civil servant

1. This is in reference to your memorandum dated 10 December 2008 seeking advice as to whether a Senior Legal Adviser in the Office of the Prosecutor at the International Criminal Tribunal for Rwanda (ICTR) may serve as an expert on the Human Rights Committee (the Committee) established under the 1966 International Covenant on Civil and Political Rights (ICCPR).

2. You state that the United Nations staff member in question, [Name] (Morocco) was elected on 4 September 2008 at the twenty-seventh meeting of the States' Parties to the ICCPR. The relevant provisions of the ICCPR on this question read as follows:

Provisions of the ICCPR

Article 28

1. There shall be established a Human Rights Committee (hereafter referred to in the present Covenant as the Committee). It shall consist of eighteen members and shall carry out the functions hereinafter provided.

2. The Committee shall be composed of nationals of the States Parties to the present Covenant who shall be persons of high moral character and recognized competence in the field of human rights, consideration being given to the usefulness of the participation of some persons having legal experience.

3. The members of the Committee shall be elected and shall serve in their personal capacity.

Article 29, paragraph 1

The members of the Committee shall be elected by secret ballot from a list of persons possessing the qualifications prescribed in Article 28 and nominated for the purpose by the States Parties to the present Covenant.

Article 30, paragraph 3:

The Secretary-General of the United Nations shall prepare a list in alphabetical order of all the persons thus nominated, with an indication of the States Parties which have nominated them, and shall submit it to the States Parties to the present Covenant no later than one month before the date of each election.

Article 38

Every member of the Committee shall, before taking up his duties, make a solemn declaration in open committee that he will perform his functions impartially and objectively.

Article 40:

1. The States Parties to the present Covenant undertake to submit reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made in the enjoyment of those rights:

(a) Within one year of the entry into force of the present Covenant for the States

Parties concerned;

(b) Thereafter whenever the Committee so requests.

2. All reports shall be submitted to the Secretary-General of the United Nations, who shall transmit them to the Committee for consideration. Reports shall indicate the factors and difficulties, if any, affecting the implementation of the present Covenant.

3. The Secretary-General of the United Nations may, after consultation with the Committee, transmit to the specialized agencies concerned copies of such parts of the reports as may fall within their field of competence.

4. The Committee shall study the reports submitted by the States Parties to the present Covenant. It shall transmit its reports, and such general comments as it may consider appropriate, to the States Parties. The Committee may also transmit to the Economic and Social Council these comments along with the copies of the reports it has received from States Parties to the present Covenant.

5. The States Parties to the present Covenant may submit to the Committee observations on any comments that may be made in accordance with paragraph 4 of this article.

Analysis

3. From the documents you have provided it appears that, in accordance with the above provisions of the ICCPR, the Secretary-General, in a note verbale dated 14 February 2008 invited the States Parties to submit their nominations for the election of nine members of the Committee. [Name] was subsequently nominated by the Government of Morocco and the Secretary-General by his note of 10 July 2008 (CCPR/SP/7I) officially circulated the names and *curricula vitae* of candidates nominated by the States Parties of the ICCPR. This included the name and *curriculum vitae* of [Name] which expressly mentioned that he currently worked as "Senior Legal Adviser in the Office of the Prosecutor, International Criminal Tribunal for Rwanda (1997 to date, more than 10 years)."

4. On 4 September 2008, [Name] was elected as a member of the Committee at the twenty-seventh meeting of States Parties to the ICCPR for a term of four years beginning on 1 January 2009. Now that [Name] has been elected, you ask whether he can serve on the Committee and also retain his position as a United Nations official at the ICTR.

5. In this particular case, States Parties to the ICCPR elected [Name] to the Committee fully aware of his status as a full time United Nations staff member. Indeed, the ICCPR does not expressly bar United Nations staff members from standing for election to the Committee.

6. However, for the United Nations the question is whether [Name]'s position as a member of the Committee would be compatible and consistent with his status and obligations as a staff member under the United Nations Staff Regulations and Rules and other administrative issuances. Our views on this question are as follows.

7. Under staff regulation 1.2 (c), "[s]taff members are subject to the authority of the Secretary-General and to assignment by him or her to any of the activities or offices of the United Nations." Moreover, staff regulation 1.2 (e) provides that staff members "pledge themselves to discharge their functions and regulate their conduct with the interests of the Organization only in view." Pursuant to staff regulation 1.2 (f), staff members "shall conduct themselves at all times in a manner befitting their status as international civil servants and shall not engage in any activity that is incompatible with the proper discharge of their duties with the United Nations. They shall avoid any action and, in particular, any kind of public pronouncement that may adversely reflect on their status, or on the integrity, independence and impartiality that are required by that status." Finally, staff regulation 1.2 (o) provides that "[s]taff members shall not engage in any outside occupation or employment, whether remunerated or not, without the approval of the Secretary-General."

8. One of the main functions of the Committee, pursuant to article 40 of the Covenant, is to review reports submitted by the States parties on measures they have adopted to give effect to the rights recognized in the Covenant and, "on progress made in the enjoyment of those rights." Meetings are pursuant to rule 33 of the Rules of Procedure of the Committee (the Rules), held in public, unless the Committee decides otherwise. Pursuant to rule 36, the summary records of public meetings of the Committee, which includes the views expressed by members of the Committee, are documents of general distribution unless the Committee decides otherwise.

9. In addition, pursuant to article 40, paragraph 4, of the ICCPR, the Committee studies the reports submitted by the States parties to the present Covenant and transmits its own reports, and such general comments as it may consider appropriate, to the States parties. The Committee may also transmit to the Economic and Social Council (ECOSOC) these comments along with the copies of the reports it has received from States Parties to the Covenant. Pursuant to rule 64 of the Rules, all reports, formal decisions and all other official documents of the Committee and its subsidiary bodies are documents of general distribution unless the Committee decides otherwise. Furthermore, pursuant to article 45 of the ICCPR the Committee submits to the United Nations General Assembly, through ECOSOC, an annual report on its activities.

10. In the case of [Name], he would, as someone who has been nominated and elected by States parties, be participating in the activities of a Committee which publicly takes positions on whether States have complied with their human rights obligations under the ICCPR. In doing so, he would be playing a key role in an inter-State process under the ICCPR, while at the same time serving as a United Nations staff member under the authority of the Secretary-General. In our view engaging in such activities would be inconsistent with [Name]'s status as an international civil servant under the Staff Regulations and Rules and in particular, staff regulation 1.2 (f).

11. Furthermore, the participation by a United Nations staff member in the decision-making of the Committee could create the perception that the Secretary-General is involved through one of his staff members in the Committee's decision-making. However, under the ICCPR the Secretary-General plays no role in the substantive decision-making of the members of the Committee. Indeed, the Secretary-General would not wish to create the perception that he is in any way involved or seeking to influence the decisions of members of the Committee who under article 38 of the ICCPR perform their functions, "impartially and conscientiously."

12. I would also like to point out that the Office of Legal Affairs has advised on a similar, but not identical situation in the past (see memorandum of 26 January 1979, attached).* That advice provided that election of a staff member to the International Law Commission was incompatible with the staff regulations and rules.

13. While it appears that the Secretary-General was aware that [Name] was, and continues to be, a staff member of the Secretariat prior to his nomination and subsequent election to the Committee, [Name] should have specifically informed the Organization that his candidature had been put forward by the Government of Morocco for the Committee and sought prior approval from the Secretary-General in accordance with estab-

* Not reproduced herein.

lished procedures. Indeed, at that time, the Secretary-General would have reminded the staff member of his status as an international civil servant and all that it entails. Most likely, his participation in the Committee would not have been authorized.

14. Given the fact that [Name]'s participation in the Committee is incompatible with his status as a staff member the simplest solution therefore, would be for [Name] to resign from the Committee.

15. Should [Name] decide to resign, which would have to be done in accordance with article 33, paragraph 2, of the ICCPR; then an election would have to be held for a vacant seat pursuant to the provisions of article 34 of the Covenant.

16. Alternatively, [Name] may also resign from service with the United Nations and then continue to serve on the Committee.

13 February 2009

(*b*) Interoffice memorandum to the Acting Chief, Policy Support Unit, Human Resources Policy Service, regarding a request for an exception to section 3 of the General Conditions of Contracts for the Services of Consultants or Individual Contractors

Intellectual property financed by the Organization and developed by a contractor becomes property of the Organization—Policy ensures that Organization retains title and control over the intellectual property—Same provisions apply to United Nations vendors—United Nations has recognized rights of contractors to pre-existing intellectual property

. . .

3. Section 3 of the General Conditions of Contracts for the Services of Consultants or Individual Contractors is based on the long-standing policy and practice of the Organization to treat intellectual property that it finances and is developed by a contractor, as a "work made for hire," within the meaning of applicable copyright law, i.e., the Organization, and not the consultant, becomes the owner of the intellectual property. The rationale is to ensure that the Organization retains title to and thus control over the intellectual property provided by the contractor in order to be able to use it, in the best interest of the Organization, without the need to later obtain the contractor's consent. Thus, while the United Nations has recognized the rights of contractors to *pre-existing* intellectual property, it has not done so with respect to works made for hire, including specially ordered or commissioned works. According to our understanding, [Name]'s work, to be financed by the Department of Public Information (DPI), would fall within the latter category. We note that section 3 of the General Conditions is also reflected in the United Nations General Conditions of Contracts, which is attached to and becomes an integral part of a United Nations contract with a commercial vendor. In view of the foregoing, this Office cannot grant an exception to section 3 of the General Conditions.

23 April 2009

(*c*) Interoffice memorandum to the Officer-in-Charge, Accounts Division, Office of Programme Planning, Budget and Accounts, regarding payments of proceeds under the Malicious Acts Insurance Policy pursuant to Administrative Tribunal Judgment No. 1388

INTERPRETATION OF JUDGMENT NO. 1388 BY THE UNITED NATIONS ADMINISTRATIVE TRIBUNAL (UNAT)—COMPENSATION AWARDED AS A RESULT OF ORGANIZATION'S FAILURE TO COMPLY WITH DUTY OF CARE IN HANDLING INSURANCE CLAIM—NO LEGAL BASIS TO OFFSET COMPENSATION SUBSEQUENTLY RECEIVED FROM INSURER—ST/SGB/2004/11 DOES NOT PROVIDE FOR DEDUCTION OF AMOUNTS FROM INSURANCE PROCEEDS BY THE ORGANIZATION

1. This is in response to your memorandum, dated 9 June 2009, in which you request the advice of the Office of Legal Affairs (OLA) as to whether the compensation awarded by the United Nations Administrative Tribunal (UNAT) to [Name 1] in Judgment No. 1388* may be offset against the proceeds of the Malicious Acts Insurance Policy (MAIP) received in respect of the death of her husband. . . .

A. Background

2. The background to this matter is as follows. On 18 August 2000, [Name 2], a UNDP staff member, was found hanged in his hotel room while on official mission to the Democratic Republic of the Congo. The MAIP claim submitted by the Office of the United Nations Security Coordinator (UNSECOORD) (now Department of Safety and Security (DSS)) in respect of [Name 2]'s death was rejected by the insurers.[1]

3. In Judgement No. 1388, dated 25 July 2008, UNAT awarded [Name 1] compensation in the sum of USD 250,000. We understand that this amount has already been paid by UNDP to [Name 2]'s widow.

4. In early 2009, following a review of the facts of the case and the UNAT Judgement, the Insurance and Disbursement Service, Office of Programme Planning, Budget and Accounts (OPPBA), requested the MAIP insurers to reopen the claim in light of the UNAT findings. As a result of this action and subsequent related discussions, the MAIP insurers reclassified the claim as payable in the sum of USD 500,000. This amount has recently been transferred by the insurers to the Organization.

B. Analysis

5. By memorandum, dated 22 October 2008, the Legal Counsel provided an analysis of UNAT Judgement No. 1388 to the Under-Secretary-General for Management. A copy of that analysis is attached hereto.* In relation to the MAIP claim submitted in respect of [Name 2]'s death, the Tribunal found, *inter alia,* that:

5.1 The Organization, as the administrator of MAIP claims, owed a duty of good faith to staff members who are Insured Persons under the MAIP and their beneficiaries. This

---

* For a summary of Judgment No. 1388, see the 2008 edition of this publication, chapter V A.

[1] At the time the claim was submitted, the MAIP was administrated by UNSECOORD. Responsibility for administering the MAIP was transferred to the Insurance and Disbursement Service/OPPBA with effect from 2004.

* Not reproduced herein.

duty entailed two obligations, "first, to conduct—or verify that local law enforcement had conducted—an adequate investigation of the death, and, second, to pursue the Applicant's claim as beneficiary under the MAIP fairly, effectively and efficiently in her best interests." (See Judgement, paragraph VII.)

5.2 Due to the absence of a proper investigation by the local authorities and deficiencies in the investigations conducted by UNSECOORD and MONUC, the "definite and unqualified conclusion" of the UNSECOORD investigation that the staff member's death was due to suicide was unwarranted and that the "strength of the conclusion of suicide must have had a significant influence on the underwriters." (*Ibid*, paragraphs VIII—IX.)

5.3 As for the Organization's obligation to vigorously pursue the Applicant's claim, the Tribunal considered that the UNSECOORD cover letter submitting the claim gave too much weight to the theory that the staff member committed suicide and highlighted the weaknesses of the claim. The Organization had, therefore, "seriously failed to present a fair and impartial description of the circumstances leading to the claim" (*ibid*, paragraph X). In addition, the Organization's procedural failure to carry out an internal review of a MAIP claim, or to consult the Applicant, prior to the submission of the claim to the underwriter, constituted a "failure of due process in the Organization's handling of the Applicant's claim." (*Ibid*, paragraphs XI.)

5.4 The Tribunal also criticized the Organization's lack of transparency in dealing with the Applicant, noting, *inter alia*, the unconscionable delays in its response and its refusal to provide her with the text of the MAIP and the documentation sent to the insurer. (*Ibid*, paragraph XII.)

6. The Tribunal concluded that "the MAIP claim was seriously mishandled by the Organization in breach of the duty of good faith, and that there was also a serious failure of due process." Accordingly, the Applicant was entitled to compensation. In assessing the amount of compensation, the Tribunal:

> [took] account of the fact that, even if the claim had been properly handled and due process had not been denied, the underwriters may still have rejected the claim on the ground that it was not due to one of the events specified in the policy (such as the act of a foreign enemy). On the other hand, had the claim been properly handled, it is not unlikely the insurer would have felt obliged to negotiate a settlement of the claim in order to avoid litigation. In this regard, it is to be noted that the insurer expressed willingness to receive further information but the Organization made no efforts whatsoever to follow up on this, despite repeated requests by the Applicant.
>
> In light of these circumstances, the Tribunal assesses the compensation due to the Applicant at USD 250,000. Although this exceeds the equivalent of two years' net base salary . . . it is justified in light of the reckless and callous treatment of the Applicant by the Organization." (*Ibid*, paragraph XIII.)

7. We note from your memorandum that, when resubmitting the claim to the MAIP insurers, OPPBA anticipated that any insurance proceeds received would be used to reimburse UNDP for the payment made to [Name 1] pursuant to the UNAT Judgement. Based on our analysis of the UNAT Judgement, however, we are of the view that the damages awarded by the Tribunal were to compensate the Applicant for the loss she had suffered as a result of the Organization's failure to comply with its duty of care in the handling of the MAIP claim in respect of her deceased husband. Accordingly, we see no legal basis

for offsetting the compensation awarded by the Tribunal against the insurance proceeds subsequently received from the MAIP insurers. We further note that Secretary-General's bulletin* ST/SGB/2004/11 provides that MAIP proceeds in respect of deceased staff members shall be paid to their surviving dependent(s). ST/SGB/2004/11 does not provide for the deduction of amounts from such insurance proceeds by the Organization and such a course of action could lead to further legal action by [Name 1].

24 June 2009

(*d*) Letter to the Prosecutor of the Special Tribunal for Lebanon concerning a proposal to establish a United Nations Service Medal

LONGSTANDING PRACTICE OF THE UNITED NATIONS NOT TO AWARD MEDALS TO STAFF MEMBERS

. . .

On behalf of the Secretary-General, I would like to thank you for your letter, dated 27 February 2009, in which you propose the establishment of a United Nations Service Medal for award to staff members who have served a minimum qualifying period with the United Nations International Independent Investigation Commission (UNIIIC), as well as to members of the Special Task Force established by the Government of Lebanon to provide support to UNIIIC.

The Secretary-General has requested me to convey his appreciation to you and to the staff of UNIIIC for their valuable service in the performance of the UNIIIC mandate. In particular, the Secretary-General is aware of the difficult environment in which UNIIIC had to operate and deeply appreciates the hard work and personal sacrifices that went into meeting those challenges.

As you will understand, however, as a matter of longstanding practice, the Organization does not award medals to United Nations staff members as their service throughout the world, often in difficult and challenging environments, is itself a testament to their achievements. The award of medals to military personnel under the command of their national governments is a matter for the national authorities concerned.

21 July 2009

(*e*) Interoffice memorandum to the Secretary of the Advisory Board of Compensation Claims regarding a claim for compensation under Appendix D of the Staff Rules

INSURANCE COVERAGE FOR CONSULTANTS ENGAGED UNDER A SPECIAL SERVICE AGREEMENT (SSA)—UNDER SSA CONDITIONS OF SERVICE COVERAGE UNDER APPENDIX D OF STAFF RULES APPLIES ONLY WHEN TRAVEL IS UNDERTAKEN ON MISSION—TRAVEL TO AND FROM WORK IS NOT CONSIDERED TRAVEL ON MISSION—SSA INTENDED FOR CONSULTANT ENGAGED FOR A DEFINED PERIOD TO PROVIDE SERVICES OF SPECIFIC NATURE THAT REQUIRE EXPERT SKILLS NOT OTHERWISE AVAILABLE WITHIN THE ORGANIZATION—SSA HOLDERS ARE NOT STAFF MEMBERS NOR DO THEY ACQUIRE RIGHTS EQUIVALENT OF THOSE OF STAFF MEMBERS

* For information on Secretary-General's bulletins, see note under section 1 of chapter V A, above.

1. This is with reference to your memorandum, dated 27 March 2009, requesting the advice of the Office of Legal Affairs (OLA) as to whether a former United Nations Development Programme (UNDP) consultant who was shot while returning home from work in Haiti is entitled to Appendix D coverage.

[. . .]

Background

3. Based on the documents provided, we understand that the background to this matter is as follows. On 27 February 2004, a UNDP consultant, [Name], was returning home from work in Port au Prince, Haiti, when he was attacked by armed men. Despite being shot in the arm, [Name] managed to flee the scene and drove to the Canapé Vert Hospital where he was admitted for treatment. Unfortunately, the Canapé Vert Hospital was attacked by armed militia that same evening and [Name] was unable to receive the medical treatment required for his injury. He subsequently received the necessary treatment in the United States.

4. [Name], with the assistance of the UNDP administration in Haiti, subsequently submitted a claim in respect of his injuries under Appendix D of the Staff Rules. His claim was considered by the Advisory Board on Compensation Claims (ABCC) at its 442nd and 443rd meeting held on 14 November 2008 and 30 January 2009, respectively. The ABCC noted that, at the time of his injury, [Name] was engaged by UNDP pursuant to a Special Service Agreement (SSA). In accordance with paragraph 6 (b) of the conditions of service attached to the SSA, Appendix D coverage "shall not apply if the consultant is not required by UNDP to undertake travel on mission under this contract." The ABCC further noted the statement provided by the UNDP Operations Manager in Haiti that "[Name] was returning home from work on 27 February 2004 via the most direct route and his normal route when he was gun fired. [He] was not traveling on official mission . . ."

5. We understand that while a majority of the members of the ABCC were of the opinion that the terms of [Name]'s SSA excluded coverage under Appendix D except for travel on official mission, one member was of the opinion that individuals engaged on SSAs are in effect staff members and should receive the same entitlements as staff members. In view of this difference of opinion, and the precedent that this case will set, the ABCC requested the OLA's advice as to whether commuting home after work could be considered as giving rise to an entitlement to Appendix D coverage within the terms of [Name]'s SSA.

Analysis

6. We note from the description of services on the first page of [Name]'s SSA that no travel details were included as part of his work assignment. We also note that it is not in dispute that [Name] was commuting from work to his usual place of residence at the time the attack occurred.

7. Paragraph 6 of the conditions of service attached to [Name]'s SSA provides, *inter alia*, that:

a. In the event of death, injury or illness attributable to the performance of services on behalf of UNDP under the terms of this contract, the consultant shall be entitled to com-

pensation equivalent to the compensation which would be payable under Appendix D to the Staff Rules of the United Nations to a staff member of the United Nations of similar rank, but not higher than the rank of Director, such compensation to be determined by UNDP on the basis of those Staff Rules.

b. *The provisions of the preceding subsection shall not apply if the consultant is not required by UNDP to undertake travel on mission under this contract.* (Emphasis added.)

c. . . . .

d. No compensation shall be payable under this paragraph unless the required medical certificate of good health is received by UNDP prior to the consultant's departure on assignment.

8. Paragraph 2 of the conditions of service further provide as follows:

The rights and obligations of the consultant are strictly limited to terms and conditions of this contract. Accordingly, the consultant shall not be entitled to any benefit, payment, subsidy, compensation or entitlement, except as expressly provided in this contract.

9. In our view, given the above-mentioned conditions in [Name]'s SSA contract, his travel to and from work would not be considered as travel on mission such as to give rise to an entitlement to Appendix D coverage.

10. With regard to the view of one member of the ABCC that individuals engaged on SSAs should receive the same entitlements as staff members, we would note that SSA holders are consultants who are engaged for a defined period to provide services of a specific nature that require expert skills not otherwise available within the Organization. Consultants hired under these arrangements are not staff members, nor do they acquire rights equivalent to staff members.

Conclusion

11. [Name] was not a staff member of the Organization at the time he was injured. Accordingly, under the terms of his SSA, he is not entitled to coverage under Appendix D of the Staff Rules in the circumstances of this present case.

12. Notwithstanding the above, we understand from our discussions with the Strategic Planning and Advisory Service of the Bureau of Management of UNDP that UNDP maintains a commercial insurance policy to provide certain coverage *in lieu* of Appendix D to consultants and individual contactors engaged under SSAs. Whilst we are not aware of the details of such commercial insurance coverage, or when the policy was taken out, we recommend that [Name] be advised to contact the Strategic Planning and Advisory Service of UNDP for consideration as to whether he would be entitled to coverage under the insurance policy held by UNDP for this purpose.

9 December 2009

8. Miscellaneous

(*a*) Proposed use of the name of United Nations Office for Partnerships (UNOPS) by two non-UN non-profit organizations that are providing *pro bono* legal and policy advisory services to certain governments under a UNOPS project for UNDP

Policy of the Organization, pursuant to General Assembly resolution 92 (I), to prohibit use of the name and emblem of the United Nations for commercial purposes—The fact that an entity is non-profit and provides services on a *pro bono* basis does not constitute basis to grant authorization to use name and emblem in furtherance of its activities

1. This is in reference to a memorandum, dated 20 November 2008, requesting the assistance of the Office of Legal Affairs in obtaining the necessary authorization, pursuant to General Assembly resolution 92 (I) of 7 December 1946, for the International Senior Lawyers Project (ISLP) and the Revenue Watch Institute (RWI) to use the UNOPS name, in the manner set forth on page 2 of the memorandum. This also refers to the telephone consultations that took place between representatives of our respective Offices in December 2008 and January 2009.

2. We understand that ISLP[1] and RWI[2] are providing *pro bono* legal and policy advisory services to several African governments under contract with UNOPS, in relation to a UNOPS implemented project, on behalf of UNDP. UNOPS has indicated that the project is aimed at strengthening the capacity of African States to negotiate, manage and regulate large-scale investment contracts, particularly in, but not limited to, the natural resources sector. The project will take the form of a regional facility based in the UNDP Regional Service Centre in Dakar that can support requests from African countries for support in targeted areas.

3. ISLP has requested that the UNOPS-ISLP contract include the following provision:

> 5. *Advertising*. Except where expressly otherwise agreed to in writing or required by law, the Organization shall not advertise or otherwise make public the fact that it has entered into an Agreement with UNOPS or use the name, emblem or official seal of UNOPS or the United Nations or any abbreviation of the name of UNOPS or the United Nations for advertising purposes or any other purposes. *UNOPS hereby agrees that the Organization may disclose to its donors, civil society and government agencies this Agreement and the fact that UNOPS has provided financial support for particular projects, including the amount and nature of such support*. (Emphasis added.)

4. Similarly, RWI has requested that the UNOPS-RWI contract include the following provision:

> 5. *Advertising*. Except where expressly otherwise agreed in writing or required by law, the Organization shall not advertise or otherwise make public for purposes of com-

[1] A "501 (c) (3)" organization, for the purpose of taxation, under the Internal Revenue Code of the United States of America.

[2] A New York based non-profit policy institute and grant-making organization that promotes the responsible management of oil, gas and mineral resources for the public good.

> mercial advantage or goodwill that it has entered into an Agreement with UNOPS or use the name, emblem or official seal of the United Nations, UNDP or UNOPS, or any abbreviation of the name of the United Nations, UNDP or UNOPS. *UNOPS hereby agrees that the Organization may disclose to its donors, civil society, parliamentary bodies and government agencies this Agreement*. (Emphasis added.)

5. The provisions set forth under paragraphs 3 and 4 above, with the exception of the emphasized wording, appear to be modified versions of article 12 of the United Nations General Conditions of Contract for the provision of Services (version, Jan. 2008) (the UNGCCs). We understand that UNOPS uses either the UNGCCs or a version that is based on the UNGCCs, as part of its contracts with third parties. The last sentences of paragraphs 3 and 4 above, contemplate that both ISLP and RWI would be granted permission by UNOPS to disclose certain facts about their respective agreements with UNOPS to their donors, civil society and government agencies. Such disclosure seems to contemplate that the two entities would be allowed to use the name of the United Nations, UNDP or UNOPS, or any abbreviation of those names, and possibly the emblem or official seal of the United Nations, UNDP or UNOPS (collectively and severally referred to as the "Name and Emblem"), in furtherance of their respective activities, e.g., fund-raising. In view of the foregoing, UNOPS has requested OLA's assistance to obtain the necessary authorization for ISLP and RWI to use the Name and Emblem.

6. Pursuant to General Assembly resolution 92 (I), it is the long-standing policy of the Organization to prohibit the use of the United Nations name and emblem for commercial purposes, which is reflected in the original wording of article 12 of the UNGCCs. The aim of article 12 is to prevent public solicitation for business on the basis of a connection with the United Nations. In this respect, the fact that the ISLP and RWI are non-profit entities and, as we understand it, providing the services under contract with UNOPS on a *pro bono* basis, would not constitute a basis to grant authorization to use the Name and Emblem in furtherance of their respective activities, including fund-raising. In view of the foregoing and the intended purposes for the ISLP's and RWI's respective uses of the Name and Emblem (as set forth under paragraphs 3 and 4 above), an authorization to use the Name and Emblem cannot be granted to either entity.

7. Finally, we note that the proposed contractual provisions set forth under paragraphs 3 and 4 above, define the respective vendors as the "Organization." In light of the fact that the United Nations is also often referred to as the "Organization," we suggest that a defined term, other than the "Organization," be utilised in future UNOPS contracts when referring to a vendor.

3 February 2009

(*b*) Interoffice memorandum to the Director, Mine Action Service, Department of Peacekeeping Operations, regarding a United Kingdom Department for International Development open mine action competition

Provision of any services to a Member State, person or entity must be within the mandate of the Organization and within the programme of work as approved by the General Assembly—Long-standing policy and practice of the United Nations system organizations not to engage in competitive bidding in connection with provision of services to Member States—Question of competitive bidding should

BE BROUGHT BEFORE THE GENERAL ASSEMBLY TO ENSURE THAT IT IS APPROPRIATELY WITHIN MANDATE—CONTRACT WOULD HAVE TO BE ACCEPTABLE TO THE UNITED NATIONS AS AN INTERNATIONAL ORGANIZATION POSSESSING PRIVILEGES AND IMMUNITIES

1. This is in reference to your memorandum, dated 15 July 2009, seeking the advice of the Office of Legal Affairs (OLA) regarding two questions relating to a proposed open competition process for mine action activities (the "Competitive Process"). Your memorandum explained that the Competitive Process would be conducted by the Government of the United Kingdom of Great Britain and Northern Ireland, acting through the Department of International Development (DFID). Thus, you asked:

(*i*) Whether the United Nations Mine Action Service (UNMAS), as part of the United Nations Secretariat, would be allowed to participate as a potential service provider in a competitive tender for solicitation of mine action related services initiated by a Member State; and

(*ii*) In the event that UNMAS would be eligible to participate in such a competitive tender, whether the DFID contractual documents for the acquisition of mine action related services from UNMAS would be in accordance with the applicable United Nations regulations and rules.

2. Your memorandum also attaches five documents that relate to the Competitive Process, as well as an existing memorandum of understanding between UNMAS and DFID in relation to a grant towards the UNMAS programme 2007/2010. Those documents are as follows:

(*i*) DFID General Conditions of Contract (the DFID General Conditions);

(*ii*) DFID Form of Contract for Consultancy Services (the DFID Contract);

(*iii*) DFID Schedule of Prices;

(*iv*) DFID Invitation to Tender Instructions;

(*v*) DFID's "Commercial Strategy: Procurement Can Make it Happen: A DFID Commercial Strategy," dated 10 December 2008; and

(*vi*) A signed Memorandum of Understanding between the Government of the United Kingdom of Great Britain and Northern Ireland and the United Nations regarding a Contribution to United Nations Mine Action Service (UNMAS) Programme 2007/2010 (the MOU).

3. We set forth, below, our advice in relation to each of your questions, in turn.

(i) Whether UNMAS, as part of the United Nations Secretariat, would be allowed to participate in a competitive tender with a Member State

4. As an initial matter, your questions raise the issue of whether and how the Organization should provide services to Governments of Member States or to other persons or entities. Clearly, as a threshold matter, the provision of any services to a Member State or to any other person or entity by the Organization must be within the mandate of the Organization, as established by the General Assembly or other principal or subsidiary organs of the United Nations in accordance with the Charter of the United Nations. Additionally, the provision of any such services and the utilization of the Organization's resources in connection therewith must be within the programme of work approved by the General Assembly. This Office does not have sufficient information about the services that DFID

is soliciting through the competitive process to determine whether or not it would be within all applicable mandates for UNMAS to provide such services. In any event, such a determination is more appropriate for DPKO to make, perhaps in consultation with the Controller's Office.

5. The question of whether United Nations system organizations can participate as bidders in procurement exercises conducted by Governments of Member States has previously been considered by OLA in connection with the assistance provided by such United Nations System organizations to Governments of Member States for the execution of projects funded from World Bank loans or International Development Association (IDA) credits. In a note prepared by the General Legal Division/OLA to the Legal Counsel, dated 1 March 1999[1] (the GLD Note), in connection with the preparation of a note from the Legal Counsel to the Legal Advisers of the United Nations System, GLD stated, *inter alia* that:

> 7. While the long-standing and consistent practice of the United Nations system organizations has been not to engage in competitive bidding, we are not aware of any express prohibition to their doing so. Under the circumstances, the question of whether or not they should be allowed to participate in competitive bidding seems essentially to be a policy matter.
>
> 8. In any event, we believe that there are important considerations that should be taken into account in making a decision on the matter. These considerations relate to:
>
> (a) the fundamental differences between United Nations organizations and private companies, and between their respective activities;
>
> (b) the implications for the interests of the United Nations organizations in allowing them to compete with private companies.
>
> In concluding, the note provides, in relevant part, that:
>
> 21. While it appears that the traditional policies and practices of United Nations system organizations has been not to engage in competitive bidding for the provision of assistance or services to Governments, we are not aware of any express prohibition to their doing so. While difficult to evaluate, it also appears that engaging in competitive bidding by United Nations system organizations may entail a risk of challenges to their immunity or adverse reactions from Member States.

6. In a related note to the Legal Advisers of the United Nations System, dated 5 March 1999, the Legal Counsel summarized the conclusions that were reached at their 1999 Meeting in Rome on 4 and 5 March 1999. The Legal Counsel stated, in relevant part, that, "[I]t must be recognized that, while there are significant legal aspects to the matter, whether or not the organizations will engage in competitive bidding is fundamentally a policy matter. As far as the Legal Advisers were aware, participation in competitive bidding was never contemplated by the General Assembly or the Economic and Social Council of the United Nations."

7. In light of the foregoing, we consider that it is essentially a policy matter as to whether to participate in a competitive tender with a Member State or, more specifically, whether to participate in the Competitive Process to be conducted by DFID. In reach-

[1] Although the note is dated 1 March 1989, the note references dates that occurred after 1989. Therefore, we consider that the reference to "1989" was a typographical error, and that it probably meant "1999," instead.

ing such decision, consideration should be given to the provisions of Secretary-General's bulletin* ST/SGB/2000/9, entitled "Functions and organization of the Department of Peacekeeping Operations," section 8, which sets forth the six core functions of the Mine Action Service (see attachment).* In any event, should it be considered desirable to depart from the long standing policy and practice of the United Nations system organizations not to engage in competitive bidding in connection with the provision of services to Member States, in view of the importance and sensitivity of this issue, this question should be brought to the attention of the General Assembly in an appropriate format (e.g., a separate report, or a strategic plan for the Department of Peacekeeping Operations (DPKO), etc.) to ensure that this is appropriately within the mandate of DPKO and the Mine Action Service.

8. Although this Office has not been asked to comment on the United Nations Development Programme (UNDP) or United Nations Children's Fund (UNICEF) proposed participation in the Competitive Process, the GLD Note, in its paragraph 15, does reference those two entities, as follows:

> 15. UNDP and UNICEF indicated that it is not their policy to participate in competitive bidding, and that this would in their view not be appropriate. In their view, participation in competitive bidding would not be consistent with the established framework for their cooperation with Governments, which reflects the concept of a partnership between them and such Governments for the realization of the Governments" development objectives, based on the respective mandates set by their governing bodies, the agreements concluded with such Governments to establish the basic conditions of their cooperation (*i.e.*, the Basic Cooperation in the case of UNICEF and the Basic Assistance Agreement in the case of UNDP), and the instruments agreed with such Governments for the coordination and integration of their cooperation (the Masterplan of Operations in the case of UNICEF, and the Country Cooperation Framework in the case of UNDP.)

(ii) In the event that UNMAS would be eligible to participate in a competitive tender with a Member State, whether DFID's contractual documents would be in accordance with the applicable United Nations regulations and rules

9. We note that neither the DFID Contract nor the DFID General Conditions would be appropriate for the United Nations to sign. The two documents contemplate that the successful bidder is a commercial entity, rather than an intergovernmental organization, such as the United Nations, possessing certain privileges and immunities.[2] Furthermore, we note that both the DFID Invitation to Tender and the DFID Schedule of Prices would contemplate payment to UNMAS after the services have been provided, either in a lump sum on completion of the services or at relevant points throughout the contract period. In this regard, the United Nations typically receives funds *prior to* undertaking activities.

---

* For information on Secretary-General's bulletins, see note under section 1 of chapter V A, above.

* Not reproduced herein.

[2] For example, many of the provisions contained within the DFID General Conditions are contrary to the UN's privileges and immunities (see section 9 (Access and Audit), providing DFID with the right of unrestricted access to the UN's records; see section 8 (Official Secrets Act), which purports to make the successful bidder and the successful bidder's personnel subject to the Official Secrets Act 1911–1989; see Section 30 (Law) which specifies that the Contract shall be governed by the laws of England and Wales; and Section 31 (Amicable Settlement), which provides for arbitration procedures that are not in accordance with the UN's requirements on this subject matter.

10. Accordingly, should UNMAS decide to participate in the DFID Competitive Process, UNMAS would first need to obtain DFID's agreement that, should UNMAS be successful, the parties would sign a memorandum of understanding in a form acceptable to the United Nations rather than sign the DFID Contract. If UNMAS is considering participating in the competitive process in collaboration with UNDP and UNICEF, the text of any resulting memorandum of understanding would need to be agreed by all four parties (DFID, UNMAS, UNDP and UNICEF), *prior to* the United Nations submitting a tender. This Office would be prepared, as appropriate, to review the forms of such agreements.

29 July 2009

(*c*) Note to the Special Representative of the Secretary-General for Children and Armed Conflict concerning criteria for listing and de-listing parties in the Annexes of the Secretary-General's report on children and armed conflict

CRITERIA FOR LISTING AND DE-LISTING PARTIES TO CONFLICTS IN THE ANNEXES TO THE SECRETARY-GENERAL'S REPORTS ON CHILDREN AND ARMED CONFLICT—ISOLATED INCIDENTS OF RAPE, ACTS OF SEXUAL VIOLENCE, OR KILLING AND MAIMING, WHEN NOT PART OF A PATTERN OF VIOLATIONS ARE NOT SUFFICIENT TO LIST A PARTY IN THE ANNEXES—INCLUSION OF "OTHER SITUATIONS OF CONCERN" IN MANDATE OF THE SPECIAL REPRESENTATIVE OF THE SECRETARY GENERAL IMPLIES A BROADER CONTEXT THAN THAT OF ARMED CONFLICT

1. This is in reference to your memorandum to the Legal Counsel, to which a Guidelines Note on "Listing and de-listing criteria for killing and maiming of children and acts of rape and other sexual violence against children in armed conflict" (the Note) was attached for our comments. The Note was prepared at the request of the Security Council Working Group on Children and Armed Conflict to provide clarity on the criteria selected for the listing and de-listing of parties in the annexes to the Secretary-General's reports on children and armed conflict. Reference is also made to Security Council resolution 1882 (2009) adopted on 4 August 2009, in which, for the first time since the introduction of the two annexes by the Special Representative of the Secretary-General (SRSG) for children and armed conflict, the Council explicitly recognized the extension of the scope of annex II beyond situations of armed conflict to "other situations of concern." In reviewing the Note we have, therefore, considered also the implications of resolution 1882 (2009).

A. The threshold for inclusion in the Annexes

2. In its first introductory paragraph, the Note indicates that "isolated incidents of rape . . . as prohibited by international law . . . [is] not sufficient to list a particular party." This paragraph calls for two comments. *Firstly*, isolated incidents of rape, acts of sexual violence, or killing and maiming, as such and when they are not part of a pattern of violations are not considered international crimes, but rather crimes under the national law of the State of their commission. The reference to "as prohibited by international law" should, therefore, be deleted. *Secondly*, while the Note establishes a threshold for non-inclusion in the list, namely, "isolated cases," it does not establish a threshold for inclusion. Paragraph 2 (a) on "listing and de-listing criteria" refers to crimes constituting "grave breaches," and thus implicitly establishes too high a threshold, in that the crimes, within the definition of the Geneva Conventions and the Statute of the International Criminal Court (ICC), must

be committed in situations of armed conflict *only* and not in other situations of concern. We suggest instead the use of the words "*pattern* of killing and maiming of children and/or rape and other sexual violence against children," which is language taken from operative paragraph 3 of Security Council resolution 1882 (2009).

3. The penultimate sentence of paragraph 1 of the Note would thus read: "Parties will be listed on the basis of information provided which establishes a pattern of violations. Isolated incidents of rape or other acts of sexual violence or of killing and maiming of children would not be sufficient to list a party in either of the annexes."

4. In the second paragraph on page 1 of the Note (and throughout the text), we recommend that you replace the words "grave violations" with "serious violations."

5. In the third paragraph of the same page, second line from the top, you may wish to replace the words "as the Secretary-General deems the situation to be of concern," with the words "as long as the Secretary-General remains concerned that serious violations may re-occur."

6. In paragraph 2 (a) (i), first bullet, add the words "pattern of" before "rape, sexual slavery," and delete the words "also constituting a grave breach of the Geneva Conventions."

B. "Situations of concern"

7. Security Council resolution 1882 (2009), for the first time, recognized that annex II of the Secretary-General's reports lists parties in a context broader than that of an armed conflict, whether international or non-international in nature, and in paragraph 19 (a) thereof, refers explicitly to "other situations of concern." You will recall that for a number of years this terminology has been used by the SRSG for children and armed conflict and included in the title of annex II without a clear mandate of the Security Council, nor, for that matter, its endorsement; a situation which gave rise to legal, political and practical difficulties for the Secretary-General, the SRSG and the Secretariat as a whole.

8. With the recognition of a broader scope of annex II, we suggest the following re-formulation of paragraph 2 (a) (i), second bullet:

> *Context of the violation*—The sexual violence was committed in the context of, or associated with an armed conflict, international or non-international in nature, or in other situations of concern not necessarily amounting to an armed conflict.

9. In paragraph 2 (b) (i), second bullet, add the words "or in other situations of concern not necessarily amounting to an armed conflict," after the words "in nature."

10. In paragraph 2 (a) (i) and (ii), and in paragraph 2 (b) (i) and (ii), respectively, add the words "or to other situations of concern," after the words "any party" or "a party to the conflict."

11. In view of the foregoing we suggest that the footnote at the end of the note be deleted. The text of the footnote, as revised, should be inserted as paragraph 2 of the introduction to the note to read as follows:

> In listing parties on Annex II in situations of armed conflict not on the agenda of the Security Council, the Secretary-General has been guided by the criteria for determining the existence of an armed conflict found in international humanitarian law and international jurisprudence. The Secretary-General has adopted a pragmatic approach to this

issue, with a humanitarian emphasis focusing on ensuring broad and effective protection for children exposed and affected by conflict or other situations of concern. Paragraph 19 (a) of Security Council resolution 1882 (2009) has now broadened the scope of Annex II to include, in addition to situations of armed conflict, whether or not on the agenda of the Security Council, also "other situations of concern," which may not necessarily amount to an "armed conflict." Reference to a ''situation of concern" is not a legal determination and reference to a non-State party does not affect its legal status.

12. Given the importance of this resolution and its implications for the preparation of future Secretary-General's reports on children and armed conflict, we suggest that an explanatory note be sent to the Secretary-General, through his Chef de Cabinet, informing him of this development. We would be ready to prepare one for the consideration and signature of both the SRSG for children and armed conflict and the Legal Counsel.

19 August 2009

(*d*) Interoffice memorandum to the Director of the Codification Division, Office of Legal Affairs, concerning the International Association of Law Libraries award to the Audiovisual Library of International Law

Award by a non-profit-organization to a website created by the Codification Division—Award given to the website and not a staff member—Staff Regulations and Rules and administrative issuances promulgated thereunder are not applicable—No legal impediment to the acceptance of the award—Taking into account the non-profit-status of the organization granting the award, the award can be displayed in a discreet manner on website

1. I refer to your memorandum of 21 October 2009, seeking my advice concerning the above-referenced matter. You have indicated that the International Association of Law Libraries (IALL) has selected the United Nations Audiovisual Library of International Law (AVL), created by the Codification Division, Office of Legal Affairs (COD/OLA), for its 2009 Website Award. It is indicated in the e-mail message of 20 October 2009 from IALL that the purpose of the IALL Website Award is "to recognize and promote free legal information website that are authoritative, comprehensive, up-to-date, useful, and user-friendly," and the 2009 award was announced during the IALL annual conference on 13 October 2009 in Istanbul. You have indicated that the award consists of a certificate, a copy of which was attached to your memorandum, and an award logo for display on the AVL website. You have also indicated that the previous recipients of this prestigious award include the website of the Peace Palace Library and the Electronic Information System for International Law (EISIL) website of the American Society of International Law. From the website of IALL, I understand that IALL is a not-for-profit organization incorporated under the laws of Washington D.C., USA.

2. As you have indicated, the award is given to the AVL website, and not to any staff member of COD/OLA. Therefore, the United Nations Staff Regulations and Rules and administrative issuances promulgated thereunder concerning the acceptance by staff members of honours, gifts or remuneration from outside sources are not applicable to the present case, and there appears to be no legal impediment to the acceptance of the IALL award by COD/OLA.

3. With respect to the proposed display of the award logo on the AVL website, based on the clarifications provided by COD/OLA, I understand that COD/OLA would like to display the award certificate, which contains the award logo, on the AVL website. Taking into account the status of IALL as a not-for-profit organization, the proposal does not seem objectionable, provided that the certificate is displayed in a discreet manner. In addition, since the IALL's e-mail message of 20 October 2009 states that the award logo, and not the certificate, could be displayed on the AVL website, I suggest that you verify with IALL that the certificate, too, could be displayed.

4 November 2009

B. Legal opinions of the secretariats of intergovernmental organizations related to the United Nations

United Nations Industrial Development Organization

(*a*) Interoffice memorandum regarding the appointment of United Nations Industrial Development Organization (UNIDO) Officer-in-Charge in [State 1]

Appointment of officer-in-charge of mission pending appointment of UNIDO Representative—By analogy to diplomatic practice of States, officer-in-charge need not be cleared by receiving State—Receiving State should be informed of appointment by means of letter or note to foreign ministry

1. This is with reference to your email of [date] regarding the appointment of [Name], who is currently Head of UNIDO Operations in [State 2], as officer-in-charge of the UNIDO Office in [State 1]. The question is whether we should seek governmental clearance for his appointment or whether it would be sufficient to provide him with a formal letter of accreditation.

2. According to the diplomatic practice of States, it is not necessary to seek the consent of the receiving State for the appointment of a chargé d'affaires *ad interim*, who is left in charge until the appointment of a new head of mission (see *Satow's Guide to Diplomatic Practice*, 5th ed., 11.18). If the appointment of the chargé d'affaires takes place before the departure of the head of mission, the latter can simply write to the host authorities to inform them of the appointment. After the head of mission's departure, the appointment should be made by the ministry of foreign affairs of the sending state (see Satow, 21.5).

3. By analogy to international organizations, the appointment of an officer-in-charge of a field office need not be cleared by the receiving State. The appointment should, however, be announced by means of a letter or note. Where the appointment takes place after the departure of the former representative, the headquarters of the organization concerned should write to the local mission or foreign ministry of the receiving State.

4. It is my understanding that [Name] will serve as officer-in-charge in [State 1] pending the appointment of a UNIDO Representative. There is therefore no need to request formal governmental clearance for his appointment. I would suggest that you send a note verbale to the permanent mission in [City] informing them of his appointment and requesting that the information be conveyed to the foreign ministry. Alternatively, you could send a separate note to the foreign ministry as well.

(*b*) Interoffice memorandum regarding the format of the credentials of the Permanent Representative of [State]

No requirement that credentials of permanent representative to an international organization bear letterhead, seals, stamps or other official insignia—Provided that there is no doubt that credentials are signed by the foreign minister in person, no objection to accepting such credentials

1. I refer to your email of [date] concerning the format of the credentials of the new Permanent Representative of [State]. Attached to your emails were other emails from the Comprehensive Nuclear-Test-Ban Treaty Organization (CTBTO), International Atomic Energy Agency (IAEA) and the United Nations stating their respective positions on the matter. You asked me to advise you if "UNIDO can accept the credentials submitted by the Permanent Representative of [State] on [Date] (without letter head but signed by the Minister of Foreign Affairs), or whether the matter should be revisited."

2. I wish to recall that rules 27, 28 and 29 of the Rules of Procedure of the General Conference of UNIDO regulate the credentials of representatives and other persons constituting the members' delegations. These rules are silent on the format of credentials. We should therefore decide the matter on the basis of UNIDO practice. If we have no practice on the matter, then I would agree with the approach of the IAEA [Office], which is set out in the email from [Name], dated [. . .]:

> As a matter of law, the only requirement is that "the credentials shall be issued either by the Head of State or Government or by the Minister for Foreign Affairs." International law does not explicitly impose any other requirements in this regard.
>
> As a matter of practice, it is rather customary for such instruments to contain letterheads, seals, stamps or other official insignia.
>
> On the rare occasion where it has received instruments without such insignia, it appears that the Agency has in the past accepted them as formal credentials provided that they are signed in the original by the *bona fide* Head of State or Government or Minister for Foreign Affairs. A fax or copy of such an instrument, with or without insignia, would in Agency practice be deemed a provisional credential.

3. According to the relevant files of the [UNIDO Office], a number of credentials from UNIDO member States do not contain letterheads, seals, stamps or other official insignia. Provided there is no doubt that the credentials of the Permanent Representative of [State] were signed by the foreign minister in person, I see no objection to accepting them as presented.

(*c*) Interoffice memorandum regarding representation to UNIDO of [organization]

Internal dispute of non-governmental accredited to UNIDO as to authority to represent organization—Decision granting formal recognition of representatives deferred until conclusive determination by courts has been reached or organization's affairs are otherwise brought to order

1. This is with reference to the correspondence received by this Office regarding the above subject. . . .

2. At issue is an internal dispute within the [organization], which has resulted in challenges and counter-challenges to the authority of [organization]'s representatives in [City 1], [Name B] and [Name C]. In view of conflicting information received on the matter, you have asked for legal advice on what course of action to take. In order to furnish this advice, it is necessary, first, to provide a concise summary of events as they relate to UNIDO. As will become apparent, the matter is still unresolved, suggesting that it would be premature for UNIDO to recognize [Name B] and [Name C] or to regularize its relations with [organization] at this stage.

Background

3. [Organization] is a non-governmental organization registered under the laws of [State] with headquarters at [City 2]. The association was granted consultative status with UNIDO in [Year] and maintains a representative office in [City 1]. A dispute arose within [Organization] in [Year], apparently triggered by charges of malfeasance against the former Secretary General of the association. Two competing parties emerged, both claiming to be the lawful representatives of [organization], both convening meetings of its governing bodies, both having recourse to the courts, and both requesting UNIDO to take action that serves their respective interests.

4. The dispute came to UNIDO's attention last year when we received a letter dated [. . .] from one [Name D], who purported to be the Secretary General of [organization] and who informed UNIDO that [organization] had discontinued its association with [Name B] and [Name C]. Acting on what appeared to be a legitimate notification, [UNIDO Office] advised [Name B] and [Name C] that their accreditation to the forthcoming session of the Industrial Development Board had been cancelled.

5. On [Date], the ousted [Organization] representatives informed UNIDO that the high court in [City 2] had issued an order against [Name D] in [Date] which restrained him from implementing any decisions concerning the affairs of [organization]. They also advised that the former Secretary General of [organization], [Name E], had resigned from his functions and had been arrested on charges of fraud, and that the authorized office bearer of the association was its Executive Director, [Name F], who would submit proof that [Name D]'s letter of [date] was an "illegal act."

6. On [Date], [UNIDO Office] wrote to [Name B] to withdraw UNIDO's participation in the meeting of the governing bodies of [organization] convened in [City 1] later that month. [Name B] was further advised that UNIDO was not in a position to take any final decision on the basis of the information provided and that matters would remain frozen until further notice.

7. On [Date], UNIDO received a letter from the Executive Director of [Organization], [Name F], claiming that [Name D] had been appointed by an "illegal Governing Body" of [Organization], and requesting UNIDO to restore [Name B] and [Name C] to their functions as [Organization] representatives to UNIDO. [Name F]'s letter was accompanied by certain documents relating to the case, including high court papers (a notice of contempt of court proceedings against [Name D]) and a legal opinion from a firm of advocates in City 2].

8. On [Date], one [Name G], who also claimed to be the Executive Director of [Organization] (and who is listed as such on the association's website), sent a letter to

the Director-General, claiming that there were ongoing civil and criminal proceedings against [Name F] in connection with the misappropriation and embezzlement of funds. He claimed further that [Name B] and [Name C] were "acting in connivance" with [Name F] in convening an "illegal meeting" of [Organization] in [City 1] in [Date], which he urged UNIDO not to attend.

9. On [date], [Name B] again wrote to [UNIDO Office] requesting that he and [Name C] be restored to their positions as duly authorized representatives of [Organization] to UNIDO.

Questions

10. The main questions under consideration are:

- whether UNIDO should accept [Name B] and [Name C] as [Organization] representatives to UNIDO, and
- whether UNIDO should again participate in meetings convened by [Organization].

Assessment and advice

11. It would appear that the dispute for control of [organization] has not been definitively resolved. The last court document brought to our attention is the notice, dated [. . .], of contempt of court proceedings against [Name D], the putative Secretary General of [Organization]. The outcome of those proceedings, which were set down for [Date], is unknown, as is the outcome of other possible cases related to the dispute. As a result, UNIDO does not have all the information necessary to take a decision on the position of [Name B] and [Name C], or on the UNIDO's participation in [Organization] meetings, the legitimacy of which may still be challenged.

12. In view of the above, I would recommend deferring a decision to grant formal recognition to [Name B] and [Name C] until there has been a conclusive determination by the courts or until [Organization] has otherwise brought its affairs in order. In the meantime, this Office would gladly provide advice on the content of any letter you may wish to send to [Name B] and [Name C]. In particular, it would be useful to request them to provide an update on the status of litigation relating to [Organization] and to furnish us with copies of all orders and judgments issued by the [State]'s courts in this regard.

(*d*) Note verbale of the United Nations on behalf of Vienna-based International Organizations regarding a decision by the [State 1] authorities to reduce Permanent Mission of [State 2]'s right to sell its official vehicles and those of its staff

Privileges and immunities of permanent missions to international organizations—Privileges and immunities are to be accorded all permanent missions unconditionally and on an equal basis

The Secretariat of the United Nations (Vienna) presents its compliments to the [Ministry], and has the honour to refer to a communication from the Permanent Mission of [State

2] to the United Nations and other International Organizations in Vienna, concerning the decision by the [State] authorities to reduce the Mission's right to sell its official vehicles and those of its staff. The [State] authorities have increased the minimum period after which the Permanent Mission is permitted to sell the vehicles from two to five years.

In this connection, the Secretariat, also on behalf of the Vienna-based International Organizations, wishes to provide the comments below.

The Secretariat has been informed that the [Ministry] has based its position on sections 31 and 50 of the Agreement between [State] and the United Nations regarding the Seat of the United Nations in [City], signed on [Date] (the Seat Agreement).

The Secretariat is of the view—as stated on previous occasions- that neither of the above provisions cited by the [Ministry] provide legal justification to curtail the privileges and immunities of permanent missions by invoking the principle of bilateral reciprocity. Permanent missions are accredited to international organizations (section 31) and fall within the context of multilateral diplomacy. This interpretation is clearly supported by the terms of article 50 of the Seat Agreement, which expressly excludes reciprocity as follows:

> This Agreement shall apply whether or not the Government maintains diplomatic relations with the State or Organization concerned and irrespective of whether the State concerned grants the same privileges or immunities to diplomatic envoys or nationals of the [State].

This article is included in the "General Provisions" (article XV) which apply to the Seat Agreement as a whole. Its rationale is to prevent any selective treatment of the permanent missions by the host country, depending on the existing bilateral relations they might have, thus, permitting the international organization to function effectively and undisturbed in its operations by national requirements of reciprocity.

Similarly, it is the Secretariat's view that the reference to section 31 of the Seat Agreement does not provide any legal ground for limiting a permanent mission's privileges and immunities. The purpose of the provision reading: "Permanent missions accredited to the United Nations in [City] shall enjoy the same privileges and immunities as are accorded to diplomatic missions in [State 1]" is to ensure that the privileges and immunities accorded to permanent missions are not selectively different from those enjoyed by all other Diplomatic Missions. Granting such privileges and immunities to a particular permanent mission does not mean that it should be subject to the reciprocity existing in the bilateral relations with [State 1]. Privileges and immunities are to be accorded to the permanent missions unconditionally and on equal basis.

In the light of the above, the Secretariat, also on behalf of the Vienna-based international organizations, is not in a position to accept the [Ministry]'s application of reciprocity with regard to the permanent mission of the [State 2] to the United Nations and other international organizations in Vienna. Therefore, it would be appreciated if the [State 1] authorities were to take steps to discontinue the practice of curtailing the permanent mission's privileges and immunities by applying the principle of reciprocity, and to reinstate the privileges and immunities.

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 organ of the United Nations. It was established in June 1945 by the Charter of the United Nations and began work in April 1946.

1. Judgments

(i) *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) *(Mexico* v. *the United States of America),* Judgment, 19 January 2009.

(ii) *Maritime Delimitation in the Black Sea (Romania* v. *Ukraine),* Judgment, 3 February 2009.

(iii) *Dispute regarding Navigational and Related Rights (Costa Rica* v. *Nicaragua),* Judgment, 13 July 2009.

2. Advisory Opinions

No advisory opinions were delivered by the International Court of Justice in 2009.

3. Pending cases as at 31 December 2009

(i) *Jurisdiction and Enforcement of Judgments in Civil and Commercial Matters (Belgium* v. *Switzerland)* (2009—).

(ii) *Certain Questions concerning Diplomatic Relations (Honduras* v. *Brazil)* (2009—).

(iii) *Questions relating to the Obligation to Prosecute or Extradite (Belgium* v. *Senegal)* (2009—).

(iv) *Jurisdictional Immunities of the State (Germany* v. *Italy)* (2008—).

[1] The texts of the judgments, advisory opinions and orders are published in the *ICJ Reports*. Summaries of the judgments, advisory opinions and orders of the Court are provided in English and French on its website http://www.icj-cij.org. In addition, the summaries can be found in all six official languages of the United Nations on the website of the Codification Division of the United Nations Office of Legal Affairs, http://www.un.org/law/ICJsummaries.

(v) *Application of the Interim Accord of 13 September 1995 (the former Yugoslav Republic of Macedonia* v. *Greece)* (2008—).

(vi) *Accordance with International Law of the Unilateral Declaration of Independence by the Provisional Institutions of Self-Governance of Kosovo (Request for Advisory Opinion)* (2008—).

(vii) *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia* v. *Russia)* (2008—).

(viii) *Aerial Herbicide Spraying (Ecuador* v. *Colombia) (2008—)*

(ix) *Maritime Dispute (Peru* v. *Chile)* (2008—).

(x) *Pulp Mills on the River Uruguay (Argentina* v. *Uruguay)* (2006-).

(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 Tribunal in 2009. On 16 December 2009, the Tribunal ordered the discontinuance of the *Case concerning the Conservation and Sustainable Exploitation of Swordfish Stocks in the South-Eastern Pacific Ocean (Chile/European Union)*, and ordered its removal from the list of cases.

[2] For more information about the Tribunal's activities, including relating to orders rendered in 2009, see the Annual report of the International Tribunal for the Law of the Sea for 2009 (forthcoming at the time of publication) and the Tribunal's website at www.itlos.org.

[3] United Nations, *Treaty Series*, vol. 1833, p. 3.

[4] *Ibid*., vol. 2000, p. 468.

2. Pending cases as at 31 December 2009

Case No. 16—Dispute concerning Delimitation of the Maritime Boundary between Bangladesh and Myanmar in the Bay of Bengal (Bangladesh/Myanmar) (2009-)

C. International Criminal Court[5]

The International Criminal Court (ICC) is an independent permanent court established by the Rome Statute of the International Criminal Court, 1998.[6] The Negotiated Relationship Agreement between the International Criminal Court and the United Nations[7] outlines the relationship between the two institutions.

As of 2009, 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. On 5 November 2009, the Prosecutor informed the Court of his intention to submit a request for the authorization of an investigation into the situation in the Republic of Kenya.

1. Situations under investigation in 2009

(*a*) Situation in Democratic Republic of the Congo (ICC-01/04)

The trial in the cases *The Prosecutor* v. *Thomas Lubanga Dyilo* (ICC-01/04–01/06) and *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui* (ICC-01/04–01/07) began on 26 January and 24 November 2009, respectively.

(*b*) Situation in the Central African Republic (ICC-01/05)

On 15 June 2009, Pre-Trial Chamber II issued a decision on the confirmation of the charges in the case *The Prosecutor* v. *Jean-Pierre Bemba Gombo* (ICC-01/05 -01/08).

(*c*) Situation in Uganda

The four suspects in the case *The Prosecutor* v. *Joseph Kony, Vincent Otti, Okot Odhiambo and Dominic Ongwen* remained at large throughout 2009.

---

[5] For more information about the Court's activities, see Report of the International Criminal Court, for the period 1 August 2008 to 31 July 2009 (A/64/356). At the time of publication, the report covering the period 1 August 2009 to 31 July 2010 was forthcoming. See also the Court's website at www.icc-cpi.int/.

[6] United Nations, *Treaty Series*, vol. 2187, p. 3.

[7] See ICC-ASP/3/Res.1. Entered into force on 22 July 2004.

(*d*) The situation in Darfur, Sudan

The suspects in the case *The Prosecutor* v. *Ahmad Muhammad Harun ("Ahmad Harun") and Ali Muhammad Ali Abd-Al-Rahman ("Ali Kushayb")* (ICC-02/05–01/07) remained at large throughout 2009.

On 4 March 2009, Pre-Trial Chamber I issued a warrant of arrest in the case *The Prosecutor* v. *Omar Hassan Ahmad Al Bashir* (ICC-02/05–01/09). The suspect remained at large throughout 2009.

On 27 August 2009, Pre-Trial Chamber I issued summonses to appear under seal in the case *The Prosecutor* v. *Abdallah Banda Abakaer Nourain and Saleh Mohammed Jerbo Jamus* (ICC-02/05–03/09).

A confirmation hearing was held between 19 and 29 October 2009 in the case *The Prosecutor* v. *Bahar Idriss Abu Garda* (ICC-02/05–02/09).

(*e*) The situation in Kenya

On 6 November 2009, the Presidency of the Court decided to assign the situation to Pre-Trial Chamber II. On 26 November 2009, the Prosecutor filed a request for authorization of an investigation into the situation in Kenya pursuant to article 15, paragraph 3, of the Rome Statute.

2. Judgments

No judgments were delivered by the Trial Chambers or Appeals Chamber in 2009.

D. International Tribunal for the former Yugoslavia[8]

The International Criminal Tribunal for the former Yugoslavia is a subsidiary body of the United Nations Security Council. The Tribunal was established by Security Council resolution 827 of 25 May 1993.[9]

1. Judgements delivered by the Appeals Chamber

(i) *Prosecutor* v. *Momčilo Krajišnik*, Case No. IT-00–39-A, Judgement, 17 March 2009.

[8] The texts of the indictments, decisions and judgements are published in the *Judicial Reports/Recueils judiciaires* of the International Criminal Tribunal for the former Yugoslavia for each given year. The texts are also available in English and French on the Tribunal's website at www.icty.org. For more information about the Tribunal's activities, see, for the period 1 August 2008 to 31 July 2009, 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/64/205-S/2009/394). At the time of publication, the report covering the period 1 August 2009 to 31 July 2010 was forthcoming.

[9] 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).

(ii) *Prosecutor* v. *Mile Mrkšić and Veselin Šljivančanin,* Case No. IT-95–13/1-A, Judgement, 5 May 2009.

(iii) *Prosecutor* v. *Dragan Jokić,* Case No. IT-05–88- R77.1-A, Judgement on Allegations of Contempt, 25 June 2009.

(iv) *Prosecutor* v. *Astrit Haragija and Bajrush Morina,* Case No. IT-04–84-R77.4-A, Judgement (on allegations of contempt), 23 July 2009.

(v) *Prosecutor* v. *Dragomir Milošević,* Case No. IT-98–29/1-A, Judgement, 12 November 2009.

2. Judgements delivered by the Trial Chambers

(i) *Prosecutor* v. *Milan Milutinović* et al., Case No. IT-05–87-T, Judgement, 26 February 2009.

(ii) *Prosecutor* v. *Milan Lukić and Sredoje Lukić,* Case No. IT-98–32/1-T, Judgement, 20 July 2009.

(iii) *Prosecutor* v. *Vojilav Šešelj,* Case No. IT-03–67-R77.2, Judgement on Allegations of Contempt, 24 July 2009.

(iv) *Prosecutor* v. *Florence Hartmann,* Case No. IT-02–54-R77.5, Judgement on Allegations of Contempt, 14 September 2009.

E. International Criminal Tribunal for Rwanda[10]

The International Criminal Tribunal for Rwanda is a subsidiary body of the United Nations Security Council. The Tribunal was established by Security Council resolution 955 (1994), adopted on 8 November 1994.[11]

1. Judgements delivered by the Appeals Chamber

(i) *François Karera* v. *the Prosecutor,* Case No. ICTR-01–74-A, Judgement, 2 February 2009.

(ii) *Protais Zigiranyirazo* v. *the Prosecutor*, Case No. ICTR-01–73-A, Judgement, 16 November 2009.

[10] The texts of the orders, decisions and judgements are published in the *Recueil des ordonnances, décisions et arrêts/Reports of Orders, Decisions and Judgements* 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. For the period 1 July 2008 to 30 June 2009, see 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/64/206-S/2009/306). At the time of publication, the report covering the period 1 July 2009 to 30 June 2010 was forthcoming.

[11] The Statute of the Tribunal is contained in the annex to the resolution.

2. Judgements delivered by the Trial Chambers

(i) *The Prosecutor* v. *Emmanuel Rukundo*, Case No. ICTR-2001–70-T, Judgement, 27 February 2009.

(ii) *The Prosecutor* v. *Callixte Kalimanzira*, Case No. ICTR-05–88-T, Judgement, 22 June 2009.

(iii) *The Prosecutor* v. *Léonidas Nshogoza*, Case No. ICTR-07–91-T, Judgement (on allegations of contempt), 7 July 2009.

(iv) *The Prosecutor* v. *Tharcisse Renzaho*, Case No. ICTR-97–31-T, Judgement and Sentence, 14 July 2009.

(v) *The Prosecutor* v. *Michel Bagaragaza*, Case No. ICTR-05–86-S, Sentencing Judgement, 17 November 2009.

(vi) *The Prosecutor* v. *Hormisdas Nsengimana,* Case No. ICTR-01–69-T, Judgement, 17 November 2009.

F. Special Court for Sierra Leone[12]

The Special Court for Sierra Leone is an independent court established by the Agreement between the United Nations and the Government of Sierra Leone on the Establishment of a Special Court for Sierra Leone.[13]

1. Judgements delivered by the Appeals Chamber

(i) *The Prosecutor* v. *Issa Hassan Sesay, Morris Kallon and Augustine Gbao* (Revolutionary United Front (RUF) case), Case No. SCSL-04–15-A, Judgment, 26 October 2009.

2. Judgements delivered by the Trial Chambers

(i) *The Prosecutor* v. *Issa Hassan Sesay, Morris Kallon and Augustine Gbao* (Revolutionary United Front (RUF) case), Case No. SCSL-04–15-T, Judgement, 25 February 2009.

(ii) *The Prosecutor* v. *Issa Hassan Sesay, Morris Kallon and Augustine Gbao* (Revolutionary United Front (RUF) case), Case No. SCSL-04–15-T, Sentencing Judgement, 8 April 2009.

---

[12] 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, for the period June 2008 to May 2009, the Sixth Annual Report of the President of the Special Court, covering the period from June 2008 to May 2009. At the time of publication, the Seventh Annual Report, covering the period June 2009 to May 2010, was forthcoming.

[13] For the text of the Agreement and the Statute of the Special Court, see United Nations, *Treaty Series,* vol. 2178, p. 137.

G. Extraordinary Chambers in the Courts of Cambodia[14]

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,[15] entered into force the 29 April 2005 and established the Extraordinary Chambers in the Courts of Cambodia to prosecute the crimes committed during the period of Democratic Kampuchea.

In the case of *Kaing Guek Eav* alias *Duch* (Case File No. 001/18–07–2007/ECCC-TC), the initial hearing began on 17 February 2009, and the trial commenced on 30 March 2009.

No judgments were delivered by the Extraordinary Chambers in 2009.

H. Special Tribunal for Lebanon[16]

The Special Tribunal for Lebanon was established in 2007 pursuant to the Agreement between the United Nations and the Lebanese Republic on the establishment of a Special Tribunal for Lebanon, dated 22 January and 6 February 2007, and Security Council resolution 1757 (2007) of 30 May 2007.

The Special Tribunal began functioning on 1 March 2009. The judges, meeting in plenary, subsequently adopted the Rules of Procedure and Evidence, the Rules Governing the Detention of Persons Awaiting Trial or Appeal before the Tribunal, and the Directive on Assignment of Defence Counsel, all of which entered into force on 20 March 2009. On 27 March 2009, the Pre-Trial Judge issued an order directing the Lebanese judicial authority seized with the case of the attack, *inter alia,* to defer to the Tribunal's competence in this case. On 10 April 2009, the Lebanese authorities referred to the Prosecutor the results of the investigation and a copy of the court's records regarding the Hariri case, at which date the Tribunal became seized of the case.

[14] The texts of the decisions of the Extraordinary Chambers in the Courts of Cambodia are available on its website, http://www.eccc.gov.kh/.

[15] United Nations, *Treaty Series,* vol. 2328.

[16] For more information about the Special Tribunal, see the reports of the Secretary-General submitted pursuant to Security Council resolution 1757 (S/2009/106, respectively).

Chapter VIII

DECISIONS OF NATIONAL TRIBUNALS

Kenya

High Court of Kenya at Nairobi

Tanad Transporters Ltd., Applicant, v. *United Nations Children's Fund, Respondent*

Ruling of 1 July 2009

Jurisdiction of the court—Privileges and immunities of the United Nations—Vienna Convention on Diplomatic Relations—Full immunity when transaction is related to official functions—Arbitration under UNCITRAL rules

The applicant filed an originating summons pursuant to the provisions of the Arbitration Act and section 3A of the Civil Procedure Act seeking to compel the respondent to submit to arbitration within twenty-one days of the issuance of the order. In the alternative, the applicant further prayed to be granted leave to commence suit against the respondent. The originating motion is supported by the annexed affidavit of Musa Said Hassan, the managing director of the applicant. On 28th April 2009, the applicant applied under provisions of Order V Rule 17 and 32 of the Civil Procedure Rules seeking to be allowed by the court to serve process upon the respondent by substituted service. The applicant claimed that the respondent had declined service citing diplomatic immunity and had even denied access to its offices to the process server. It is applicant's case that the respondent, being a party to an agreement that has an arbitration clause, and which agreement was of a commercial nature, was precluded from invoking its diplomatic immunity. When the applicant's counsel appeared before this court on 12th June 2009, this court directed the applicant to make arguments in regard to whether this court has jurisdiction to hear this application in light of the fact that the defendant was a United Nations organization and therefore is accorded immunity from civil proceedings by the Republic of Kenya.

Mr. Ligunya for the applicant submitted that the immunity granted to the respondent did not extend to a business transaction entered between the applicant and the respondent. He submitted that the respondent had refused to submit itself to arbitration despite the fact that the agreement provided for any dispute arising from the contract to be determined by arbitration. He submitted that under article 17 of United Nations Convention on Jurisdictional Immunities of States and Their Properties,* immunity could not be invoked in commercial transactions. He urged the court to allow the application.

I have carefully considered the submissions made by learned counsel for the applicant. I have also done a little research on the subject at hand. The issue for determination

* A/59/508 .

by this court is whether this court has jurisdiction to entertain a suit where one party has immunity from both criminal and civil proceedings in this court. Section 4 (1) of The Privileges and Immunities Act (Cap 179 Laws of Kenya) provides that "subject to Section 15, the articles set out in the first schedule (being articles of the Vienna Convention on Diplomatic Relations signed in 1961)* shall have the force of law in Kenya and shall for that purpose be construed in accordance with the following provisions of this Section. " Article 31 of the Vienna Convention is one of the articles that appear in the first schedule of the Act. It provides that:

> A diplomatic agent shall enjoy immunity from the criminal jurisdiction of the receiving state. He shall also enjoy immunity from its civil and administrative jurisdiction, except in the case of
>
> a. A real action relating to private immovable property situated in the territory of the receiving state, unless he holds it on behalf of the sending state for the purposes of the mission;
>
> b. An action relating to succession in which the diplomatic agent is involved as executor, administrator, heir or legatee as a private person and not on behalf of the sending state;
>
> c. An action relating to any professional or commercial activity exercised by the diplomatic agent in the receiving state outside his official functions.

In the agreement between the applicant and the respondent, the recital provided that the transportation services required by the respondent would be in regard to its official programme supplied to final destinations as stated by the United Nations Children's Fund (UNICEF). The agreement provided under clause 22 that in the event of any dispute, the parties shall endeavour to settle the dispute amicably through conciliation in accordance with "UNCITRAL Conciliation Rules". If conciliation fails, the aggrieved party or both parties will be required to refer the dispute for resolution by arbitration in accordance with the UNICITRAL Arbitration Rules then obtaining. Clause 23 of the agreement provides as follows: "*Privileges and Immunities*. The Privileges and Immunities of the United Nations, including its subsidiary organs, are not waived." It is therefore clear that for the applicant to succeed in its claim that this court has jurisdiction to hear the dispute, it must establish that the commercial activity exercised by the respondent is outside its official function. In the present application, it is clear that the transportation agreement between the applicant and the respondent related to the official function of the respondent. The respondent therefore has full diplomatic immunity from court proceedings. Further, the arbitration clause in the agreement provided that the dispute would be resolved under UNCITRAL Arbitration Rules. The applicant was required to establish that Kenya is a signatory to the said rules and further that the said rules are applicable in Kenya to entitle a party to invoke the said rules before the Kenyan courts. The agreement did not provide the venue where such disputes would be determined. Article 16 of the UNCITRAL Arbitration Rules provides for the place of arbitration. Other articles of the rules provide circumstances under which arbitration proceedings may be commenced under the said rules. My understanding of arbitrations conducted under the said UNCITRAL Arbitration Rules is that the Kenya Arbitration Act, 1995, and the Civil Procedure Act do not apply. The applicant cannot therefore invoke the provisions of the said Kenyan municipal law to compel the respondent

* United Nations, *Treaty Series*, vol. 500, p. 95.

to submit to arbitration. The applicant has no choice but to commence arbitration proceeding under the said UNCITRAL Arbitration Rules.

It is evident from the foregoing that this court lacks jurisdiction to hear and determine the dispute between the applicant and the respondent, even in the circumstances where the applicant established that there exists an arbitration clause. Further, the respondent has full diplomatic immunity from civil proceedings in this court under The Privileges and Immunities Act and the Vienna Convention on Diplomatic Relations, 1961. The respondent has not waived its diplomatic immunity to enable this court have jurisdiction to hear the matter. The applicant knows what to do in accordance with the UNCITRAL Arbitration Rules. The applicant's originating summons is therefore improperly before this court and is hereby struck out with no orders as to costs.

Dated at Nairobi this 1st day of July 2009

[*Signed*] L. Kimaru, Judge

Part Four

BIBLIOGRAPHY

A. International organizations in general

1. General

Abbott, K. W., and D. Snidal. Hard and Soft Law in International Governance. In *International Law: Classic and Contemporary Readings.* Edited by C. Ku and P.F. Diehl. 3rd ed. (Boulder, Colorado [United States]: Lynne Rienner, 2008). p. 21.

International Law: Classic and Contemporary Readings. Edited by C. Ku and P.F. Diehl. 3rd ed. (Boulder, Colorado [United States]: Lynne Rienner, 2008). 507 p.

Katz Cogan, J. Representation and Power in International Organization: The Operational Constitution and its Critics. *American Journal of International Law* vol. 103, iss. 2 (2009): p. 209.

Klabbers, J. *An Introduction to International Institutional Law.* (Cambridge [United Kingdom]: Cambridge University, 2009). 360 p.

Ku, C., and P. F. Diehl. International Law as Operating and Normative Systems: An Overview. In *International Law: Classic and Contemporary Readings.* Edited by C. Ku and P.F. Diehl. 3rd ed. (Boulder, Colorado [United States]: Lynne Rienner, 2008). p. 1.

Morin, J. L'ordre juridique international et l'éthique du bien commun dans l'ère de la mondialisation. In *Multiculturalism and International Law: Essays in Honour of Edward McWhinney.* Edited by S. Yee and J. Morin. 2009[e] ed. (Leiden [The Netherlands]: Martinus Nijhoff, 2009). p. 1.

Rama-Montaldo, M. Universalism and Particularisms in the Creation Process of International Law. In *Multiculturalism and International Law: Essays in Honour of Edward McWhinney.* Edited by S. Yee and J. Morin. (Leiden [The Netherlands]: Martinus Nijhoff, 2009). p. 129.

2. Particular questions

Abbott, K. W., and D. Snidal. Strengthening International Regulation through Transnational New Governance: Overcoming the Orchestration Deficit. *Vanderbilt Journal of Transnational Law* vol. 42, iss. 2 (2009): p. 501.

Boussard, H. La coordination des organisations internationales: l'exemple du comité interinstitutions des Nations Unies sur la bioéthique. *Revue française d'administration publique*, iss. 126 (2008): p. 373.

Dominicé, C. Fédéralisme et mise en oeuvre du droit international. In *Multiculturalism and International Law: Essays in Honour of Edward McWhinney.* Edited by S. Yee and J. Morin. (Leiden [The Netherlands]: Martinus Nijhoff, 2009). p. 227.

Dunworth, T. The Legal Adviser in International Organizations: Technician Or Guardian? *Alberta Law Review* vol. 46, iss. 4 (2009): p. 869.

Erne, J. Conferral of Powers by States as a Basis of Obligation of International Organisations. *Nordic Journal of International Law* vol. 78, iss. 2 (2009): p. 177.

Keohane, R. O., S. Macedo, and A. Moravcsik. Democracy-Enhancing Multilateralism. *International Organization* vol. 63, iss. 1 (2009): p. 1.

McCorquodale, R. International Organisations and International Human Rights Law: One Giant Leap for Humankind. In *International Law and Power: Perspectives on Legal Order and Justice*. Edited by K.H. Kaikobad and M. Bohlander. (Leiden [The Netherlands]: Martinus Nijhoff, 2009). p. 141.

B. United Nations

1. General

Bantekas, I. *Trust Funds Under International Law: Trustee Obligations of the United Nations and International Development Banks*. (The Hague [The Netherlands]: T.M.C. Asser, 2009). 306 p.

Chesterman, S. Unaccountable? The United Nations, Emergency Powers, and the Rule of Law. *Vanderbilt Journal of Transnational Law* vol. 42, iss. 5 (2009): p. 1509.

Domingo, R. The Crisis of International Law. *Vanderbilt Journal of Transnational Law* vol. 42, iss. 5 (2009): p. 1543.

Fassbender, B. *The United Nations Charter as the Constitution of the International Community*. (Leiden [The Netherlands]: Nijhoff, 2009). 215 p.

Schaefer, B.D. *ConUNdrum: The Limits of the United Nations and the Search for Alternatives*. (Lanham, Maryland [United States]: Rowman and Littlefield, 2009).

2. Prinicipal organs and subsidiary bodies

International Court of Justice

Burgis, M.L. *Boundaries of Discourse in the International Court of Justice: Mapping Arguments in Arab Territorial Disputes*. (Leiden [The Netherlands]: Martinus Nijhoff, 2009). 280 p.

Buzzini, G.P. Lights and Shadows of Immunities and Inviolability of State Officials in International Law: Some Comments on the *Djibouti* v. *France* Case. *Leiden Journal of International Law* vol. 22, iss. 3 (2009): p. 455.

Chan-Tung, L. Les exceptions préliminaires devant la CIJ: les clairs-obscurs d'une théorie? *Revue belge de droit international* vol. XL, iss. 2 (2007): p. 437.

Gourgourinis, A. Delineating the Normativity of Equity in International Law. *International Community Law Review* vol. 11, iss. 3 (2009): p. 327.

Green, J.A. Fluctuating Evidentiary Standards for Self-Defence in the International Court of Justice. *International and Comparative Law Quarterly* vol. 58, iss. 1 (2009): p. 163.

—. *The International Court of Justice and Self-Defence in International Law*. (Oxford [the United Kingdom]: Hart, 2009). 229 p.

Heinrich, D.M. International Law and Constitutional Law: International Court of Justice and Executive Power—Interpreting and Implementing International Treaty Obligations. *North Dakota Law Review* vol. 85, iss. 2 (2009): p. 435.

Kawano, M. The Administration of Justice by the International Court of Justice and the Parties. In *Multiculturalism and International Law: Essays in Honour of Edward McWhinney*. Edited by S. Yee and J. Morin. (Leiden [The Netherlands]: Martinus Nijhoff, 2009). p. 285.

Kolb, R., and S. Krähenmann. The Scope *Ratione Personae* of the Compulsory Jurisdiction of the ICJ. In *The UN Genocide Convention: A Commentary*. Edited by P. Gaeta. (Oxford [United Kingdom]: Oxford University, 2009). p. 425.

Kolb, R. The Scope *Ratione Materiae* of the Compulsory Jurisdiction of the ICJ. In *The UN Genocide Convention: A Commentary*. Edited by P. Gaeta. (Oxford [United Kingdom]: Oxford University, 2009). p. 442.

Kooijmans, P.H. The Legality of the use of Force in the Recent Case Law of the International Court of Justice. In *Multiculturalism and International Law: Essays in Honour of Edward McWhinney*. Edited by S. Yee and J. Morin. (Leiden [The Netherlands]: Martinus Nijhoff, 2009). p. 455.

Labrecque, G. *La force et le droit: jurisprudence de la Cour internationale de justice*. (Cowansville, Québec [Canada]: Bruylant, 2008). 646 p.

Mathias, D.S. The 2008 Judicial Activity of the International Court of Justice. *American Journal of International Law* vol. 103, iss. 3 (2009): p. 527.

McGoldrick, D. State Identity and Genocide: The *Bosnian Genocide* Case. In *International Law and Power: Perspectives on Legal Order and Justice*. Edited by K.H. Kaikobad and M. Bohlander. (Leiden [The Netherlands]: Martinus Nijhoff, 2009). p. 255.

McKeever, D. The Contribution of the International Court of Justice to the Law on the Use of Force: Missed Opportunities or Unrealistic Expectations? *Nordic Journal of International Law* vol. 78, iss. 3 (2009): p. 361.

Miller, A.F. The Preliminary Reference Procedure of the Court of Justice of the European Communities: A Model for the ICJ? *Hastings International and Comparative Law Review* vol. 32, iss. 2 (2009): p. 669.

Palms, K. A Missed Opportunity to Exercise 'Passive Virtue': Applying the Political Question Doctrine to *Bosnia* v. *Serbia*. *U.C. Davis Journal of International Law and Policy* vol. 15, iss. 2 (2008): p. 249.

Quigley, J. The United States' Withdrawal from International Court of Justice Jurisdiction in Consular Cases: Reasons and Consequences. *Duke Journal of Comparative and International Law* vol. 19, iss. 2 (2009): p. 263.

Rosenne, S. The International Court of Justice—New Practice Directions. *The Law and Practice of International Courts and Tribunals* vol. 8, iss. 2 (2009): p. 171–180.

Schmitt, P. The Future of Genocide Suits at the International Court of Justice: France's Role in Rwanda and Implications of the *Bosnia* v. *Serbia* Decision. *Georgetown Journal of International Law* vol. 40, iss. 2 (2009): p. 585.

Talmon, S. The Responsibility of Outside Powers for Acts of Secessionist Entities. *International and Comparative Law Quarterly* vol. 58, iss. 3 (2009): p. 493.

Tanaka, Y. Reflections on Maritime Delimitation in the *Romania/Ukraine* Case before the International Court of Justice. *Netherlands International Law Review* vol. 56, iss. 3 (2009): p. 397.

Thirlway, H. The Recommendations made by the International Court of Justice: A Sceptical View. *International and Comparative Law Quarterly* vol. 58, iss. 1 (2009): p. 151.

Townsend, J. *Medellin* Stands Alone: Common Law Nations do not show a Shared Postratification Understanding of the ICJ. *The Yale Journal of International Law* vol. 34, iss. 2 (2009): p. 463.

Vasseur, A. L'influence des traditions juridiques nationales sur la motivation des décisions de la Cour Internationale de Justice. *Revue belge de droit international* vol. XL, iss. 2 (2007): p. 474.

Viera, D.R., and L.N.C. Brant. Os Desafios da Corte Internacional de Justiça na Atualidade. *Anuário Brasileiro de Direito Internacional* vol. 1 (2009): p. 113.

Vukas, B. Some Provisions of the Statute of the International Court of Justice which Deserve Amendments. In *Multiculturalism and International Law: Essays in Honour of Edward McWhinney*. Edited by S. Yee and J. Morin. (Leiden [The Netherlands]: Martinus Nijhoff, 2009). p. 277.

Weisburd, A.M. The International Court of Justice and the Concept of State Practice. *University of Pennsylvania Journal of International Economic Law* vol. 31, iss. 2 (2009): p. 295–372.

Secretariat

Hwang, P. Reform of the Administration of Justice System at the United Nations. *The Law and Practice of International Courts and Tribunals* vol. 8, iss. 2 (2009): p. 181.

Sanz Caballero, S. *Las funciones políticas del Secretario General de Naciones Unidas*. (Valencia [Spain]: Tirant lo Blanch, 2008). 148 p.

Vallarta Marròn, J. L. Reflexiones sobre cuestiones juridicas del Informe des Secretario General de las Naciones Unidas sobre la reforma de la Organización. *Revista de la Facultad de Derecho de México* vol. 57, iss. 246 (2007): p. 123.

Security Council

Alvarez, J. E. Contemporary International Law: An Empire of Law Or the Law of Empire. *American University International Law Review* vol. 24, iss. 5 (2009): p. 811.

—. U.S. Policies Towards and in the U.N. Security Council. *ILSA Journal of International and Comparative Law* vol. 15, iss. 2 (2009): p. 319.

Alves Pereira, A. C. Notas sobre a reforma do Conselho de Segurança das Nações Unidas. *Anuario Hispano-Luso-Americano de derecho internacional*, iss. 18 (2007): p. 209.

Antonopoulos, C. The UN Security Council and Genocide. *Revue Hellénique de droit international* (2008): p. 3.

Benson, M., and N. S. Satana. Choosing Sides: UN Resolutions and Non-Neutrality. In *International Conflict Mediation: New Approaches and Findings*. Edited by J. Bercovitch and S.S. Gartner. (London [United Kingdom]: Routledge, 2009). p. 135.

Biakotozky, N. Overcoming Collective Action Failure in the Security Council: Would Direct Regional Representation Better Protect Universal Human Rights? *Buffalo Human Rights Law Review* vol. 15 (2009): p. 1.

Bosco, D. L. *Five to Rule them all: The UN Security Council and the Making of the Modern World*. (Oxford [United Kingdom]: Oxford, 2009). 310 p.

Cadin, R. *I presupposti dell'azione del Consiglio di sicurezza nell'articolo 39 della Carta delle Nazioni unite*. (Milan [Italy]: A. Giuffrè, 2008). 593 p.

Cook, S. Security Council Resolution 1820: On Militarism, Flashlights, Raincoats, and Rooms with Doors—A Political Perspective on where it Came from and what it Adds. *Emory International Law Review* vol. 23, iss. 1 (2009): p. 125.

Critchlow, G. A. Stopping Genocide through International Agreement when the Security Council Fails to Act. *Georgetown Journal of International Law* vol. 40, iss. 2 (2009): p. 311.

Dastoor, N. F. The Responsibility to Refine: The Need for a Security Council Committee on the Responsibility to Protect. *Harvard Human Rights Journal* vol. 22, iss. 1 (2009): p. 25.

de Burca, G., I. Canor, and A. Nollkaemper. The European Courts and the Security Council: Between *Dedoublement Fonctionnel* and Balancing of Values: Three Replies to Pasquale De Sena and Maria Chiara Vitucci. *European Journal of International Law* vol. 20, iss. 3 (2009): p. 870.

De Sena, P., and M. C. Vitucci. The European Courts and the Security Council: Between *Dedoublement Fonctionnel* and Balancing of Values: A Rejoinder to Grainne De Burca, Andre Nollkaemper and Iris Canor. *European Journal of International Law* vol. 20, iss. 3 (2009): p. 889.

de Wet, E. Holding the United Nations Security Council Accountable for Human Rights Violations through Domestic and Regional Courts: A Case of 'Be Careful what You Wish for'? In *Sanctions, Accountability and Governance in a Globalised World*. Edited by J. Farrall and K. Rubenstein. (Cambridge [the United Kingdom]: Cambridge University Press, 2009). p. 143.

Farrall, J. Should the United Nations Security Council Leave it to the Experts? the Governance and Accountability of UN Sanctions Monitoring. In *Sanctions, Accountability and Governance in a Globalised World*. Edited by J. Farrall and K. Rubenstein. (Cambridge [the United Kingdom]: Cambridge University Press, 2009). p. 191.

Farrell, J. Does the UN Security Council Compound the Global Democratic Deficit? *Alberta Law Review* vol. 46, iss. 4 (2009): p. 913.

Gruenberg, J. S. An Analysis of United Nations Security Council Resolutions: Are all Countries Treated Equally? *Case Western Reserve Journal of International Law* vol. 41, iss. 2–3 (2009): p. 469.

Gurule, J. The Demise of the UN Economic Sanctions Regime to Deprive Terrorists of Funding. *Case Western Reserve Journal of International Law* vol. 41, iss. 1 (2009): p. 19.

Houghton, M. C. Walking the Plank: How United Nations Security Council Resolution 1816, while Progressive, Fails to Provide a Comprehensive Solution to Somali Piracy. *Tulsa Journal of Comparative & International Law* vol. 16, iss. 2 (2009): p. 253.

Hovell, D. The Deliberative Deficit: Transparency, Access to Information and UN Sanctions. In *Sanctions, Accountability and Governance in a Globalised World.* Edited by J. Farrall and K. Rubenstein. (Cambridge [The United Kingdom]: Cambridge University Press, 2009). p. 92.

Johansson, P. The Humdrum use of Ultimate Authority: Defining and Analysing Chapter VII Resolutions. *Nordic Journal of International Law* vol. 78, iss. 3 (2009): p. 309.

Kreipe, N. *Les autorisations données par le Conseil de sécurité des Nations Unies à des mesures militaires.* (Paris: L.G.D.J., 2009). 321 p.

Lavranos, N. Judicial Review of UN Sanctions by the European Court of Justice. *Nordic Journal of International Law* vol. 78, iss. 3 (2009): p. 343.

Messineo, F. The House of Lords in *Al-Jedda* and Public International Law: Attribution of Conduct to UN-Authorized Forces and the Power of the Security Council to Displace Human Rights. *Netherlands International Law Review* vol. 56, iss. 1 (2009): p. 35.

Michaelson, C. *Kadi* and *Al Barakaat v Council of the European Union and Commission of the European Communities*—The Incompatibility of the United Nations Security Council's 1267 Sanctions Regime with European due Process Guarantees. *Melbourne Journal of International Law* vol. 10, iss. 1 (2009): p. 329.

Nasu, H. Who Guards the Guardian? Towards Regulation of the UN Security Council's Chapter VII Powers through Dialogue. In *Sanctions, Accountability and Governance in a Globalised World.* Edited by J. Farrall and K. Rubenstein. (Cambridge [The United Kingdom]: Cambridge University, 2009). p. 123.

Schreck, R. Rhetoric without Results: United Nations Security Council Resolutions Concerning Rape during Armed Conflict. *Penn State International Law Review* vol. 28, iss. 1 (2009): p. 83.

Stenhammar, F. United Nations Targeted Sanctions, the International Rule of Law and the European Court of Justice's Judgment in *Kadi* and *Al-Barakaat* . *Nordic Journal of International Law* vol. 79, iss. 1 (2010): p. 113.

Végh, K. A Legislative Power of the UN Security Council? *Acta Juridica Hungarica* vol. 49, iss. 3 (2008): p. 275.

Weema, C. *Kadi* v. Council: Putting the United Nations in its Place. *Tulane Journal of International and Comparative Law* vol. 17, iss. 2 (2009): p. 571.

Zou, K. Piracy and the Security Council. *International Journal of Marine and Coastal Law* vol. 24, iss. 3 (2009): p. 583.

C. INTERGOVERNMENTAL ORGANIZATIONS RELATED TO THE UNITED NATIONS

1. Food and Agriculture Organization of the United Nations

Lugten, G. The FAO Global Record of Fishing Vessels, Refrigerated Vessels and Fishing Support Vessels. *International Journal of Marine and Coastal Law* vol. 23, iss. 4. (2008): p.761.

2 International Centre for Settlement of Investment Disputes

McArthur, K.S., and P.A. Ormachea. International Investor-State Arbitration: An Empirical Analysis of ICSID Decisions on Jurisdictions. *Review of Litigation* vol. 28, iss. 3 (2009): p. 559–594.

Schreuer, C.H., et al. *The ICSID Convention: A Commentary*. 2nd ed. ed. (Cambridge [United Kingdom]: Cambridge University, 2009). 1524 p.

Stern, B. Civil Society's Voice in the Settlement of International Economic Disputes. *ICSID Review Foreign Investment Law Journal* vol. 22, iss. 2 (2007): p. 280.

Supnik, K.M. Making Amends: Amending the ICSID Convention to Reconcile Competing Interests in International Investment Law. *Duke Law Journal* vol. 59, iss. 2 (2009): p. 343.

Vannieuwenhuyse, G. Bringing a Dispute Concerning ICSID Cases and the ICSID Convention before the International Court of Justice. *The Law and Practice of International Courts and Tribunals* vol. 8, iss. 1 (2009): p. 115–141.

3. International Civil Aviation Organization

Abeyratne, R. A Critical Look at ICAO Policies on Charges Levied for Airports and Air Navigation Services. *Air and Space Law* vol. 34, iss. 3 (2009): p. 177–187.

—. The ICAO Conference on the Economics of Airports and Air Navigation Services. *Air and Space Law* vol. 34, iss. 1 (2009): p. 39–47.

4. International Labour Organization

Maupain, F. New Foundation Or New Facade? The ILO and the 2008 Declaration on Social Justice for a Fair Globalization. *European Journal of International Law* vol. 20, iss. 3 (2009): p. 823.

Payoyo, P. B. The Contribution of the 2006 ILO Maritime Labour Convention to Global Governance. In *The Future of Ocean Regime-Building: Essays in Tribute to Douglas M. Johnston*. Edited by A. Chircop, T.L. McDorman, and S.J. Rolston. (Leiden [The Netherlands]: Nijhoff, 2009). p. 385.

Reis, D. M. O Regime Especial De Reservas Da Organizacao Internacional do Trabalho: A Reserva Implicita Ao Retrocesso Juridico e Social Dos Trabalhadores. *Anuário Brasileiro de Direito Internacional* vol. 1 (2009) (2009): p. 170.

5. International Maritime Organization

Allen, C. H. Revisiting the Thames Formula: The Evolving Role of the International Maritime Organization and its Member States in Implementing the 1982 Law of the Sea Convention. *San Diego International Law Journal* vol. 10, iss. 2 (2009): p. 265–333.

Blanco-Bazán, A. Specific Regulations for Shipping and Environmental Protection in the Arctic: The Work of the International Maritime Organization. *International Journal of Marine and Coastal Law* vol. 24, iss. 2 (2009): p. 381–386.

6. International Monetary Fund

Brown, B. S. Multiculturalism and the Bretton Woods Institutions. In *Multiculturalism and International Law: Essays in Honour of Edward McWhinney.* Edited by S. Yee and J. Morin. (Leiden [The Netherlands]: Martinus Nijhoff, 2009). p. 345.

Holder, W. E. International Organizations and Governance of the International Monetary Fund. In *Multiculturalism and International Law: Essays in Honour of Edward McWhinney.* Edited by S. Yee and J. Morin. (Leiden [The Netherlands]: Martinus Nijhoff, 2009). p. 373.

7. United Nations Educational, Scientific and Cultural Organization

Current Legal Developments: Intergovernmental Oceanographic Commission of the United Nations Educational, Scientific and Cultural Organization. *The International Journal of Marine and Coastal Law* vol. 24 (2009): p. 173.

Galis, A. UNESCO Documents and Procedure: The Need to Account for Political Conflict when Designating World Heritage Sites. *Georgia Journal of International and Comparative Law* vol. 38, iss. 1 (2009): p. 205.

Goodwin, E. J. The World Heritage Convention, the Environment, and Compliance. *Colorado Journal of International Environmental Law and Policy* vol. 20, iss. 2 (2009): p. 157.

Goy, R. La restitution des objets culturels deplacés en relation avec la Seconde guerre mondiale à l'UNESCO. In *Hague Yearbook of International Law = Annuaire de La Haye de droit international.* (Dordrect [the Netherlands]: Martinus Nijhoff, 2008). p. 95.

8. World Bank Group

Bantekas, I. *Trust Funds Under International Law: Trustee Obligations of the United Nations and International Development Banks.* (The Hague [the Netherlands]: T.M.C. Asser, 2009). 306 p.

Michalowski, S., and J. P. Bohoslavsky. *Ius Cogens*, Transnational Justice and Other Trends of the Debate on Odious Debts: A Response to the World Bank Discussion Paper on Odious Debts. *Columbia Journal of Transnational Law* vol. 48, iss. 1 (2009): p. 59.

Norton, J. J. Comment on the Developing Transnational Network(s) in the Area of International Financial Regulation: The Underpinnings of a New Bretton Woods II Global Financial System Framework. *International Lawyer* vol. 43, iss. 1 (2009): p. 175.

Sarfaty, G.A. Why Culture Matters in International Institutions: The Marginality of Human Rights at the World Bank. *American Journal of International Law* vol. 103, iss. 4 (2009): p. 647.

9. World Health Organization

Bayer, R., and C. Edington. HIV Testing, Human Rights, and Global AIDS Policy: Exceptionalism and its Discontents. *Journal of Health Politics, Policy and Law* vol. 34, iss. 3 (2009): p. 301.

Murray, C. Implementing the New International Health Regulations: The Role of the WTO's Sanitary and Phytosanitary Agreement. *Georgia Journal of International Law* vol. 40, iss. 2 (2009): p. 625.

10. World Intellectual Property Organization

Okediji, R. WIPO-WTO Relations and the Future of Global Intellectual Property Norms. *Netherlands Yearbook of International Law* vol. 39 (2008): p. 69.

11. World Trade Organization

Alavi, A. M. *Legalization of Development in the WTO: Between Law and Politics*. (Alphen aan den Rijn [the Netherlands]: Kluwer Law International, 2009). 264 p.

Alvarez-Jimenez, A. The WTO Appellate Body's Decision-Making Process: A Perfect Model for International Adjudication? *Journal of International Economic Law* vol. 12, iss. 2 (2009): p. 289.

—. The WTO Appellate Body's Exercise of Judicial Economy. *Journal of International Economic Law* vol. 12, iss. 2 (2009): p. 393.

Azaria, D. Energy Transit Under the Energy Charter Treaty and the General Agreement on Tariffs and Trade. *Journal of Energy and Natural Resources Law* vol. 27, iss. 4 (2009): p. 559

Barcelo III, J. J. Burden of Proof, *Prima Facie* Case and Presumption in WTO Dispute Settlement. *Cornell International Law Journal* vol. 42, iss. 1 (2009): p. 23.

Bhala, R., and D. A. Gantz. WTO Case Review 2008. *Arizona Journal of International and Comparative Law* vol. 26, iss. 1 (2009): p. 113.

Bown, C. P. U.S.—China Trade Conflicts and the Future of the WTO. *The Fletcher Forum of World Affairs* vol. 33, iss. 1 (2009): p. 27.

Brewster, R. Shadow Unilateralism: Enforcing International Trade Law at WTO. *University of Pennsylvania Journal of International Economic Law* vol. 30, iss. 4 (2009): p. 1133.

Busch, M. L., and K. J. Pelc. Does the WTO Need a Permanent Body of Panelists? *Journal of International Economic Law* vol. 12, iss. 3 (2009): p. 579.

Byk, C. Force normative et multiplicité des sources en droit international des sciences de la vie. *Journal du droit international* vol. 136, iss. 2 (2009): p. 555.

Carey, T. Cartel Price Controls Vs. Free Trade: A Study of Proposals to Challenge OPEC's Influence in the Oil Market through WTO Dispute Settlement. *American University International Law Review* vol. 24, iss. 4. (2009): p.783.

Catbagan, A. Rights of Action for Private Non-State Actors in the WTO Dispute Settlement System. *Denver Journal of International Law and Policy* vol. 37, iss. 2. (2009): p.279(24).

Cazala, J. L'OMC à la carte? Les aménagements conventionnels aux obligations des Membres permis par le droit conventionnel de l'Organisation Mondiale du commerce. *Revue generale de droit international public* vol. 113, iss. 1 (2009): p. 45.

Charnovitz, S. The Enforcement of WTO Judgments. *The Yale Journal of International Law* vol. 34, iss. 2 (2009): p. 558.

Cho, S. Of the World Trade Court's Burden. *European Journal of International Law* vol. 20, iss. 3 (2009): p. 675.

Christoff, A. E. The Chinese Automobile Industry and the World Trade Organization: China's Non-Compliance with WTO Regulations through its Subsidizing of Automobile Manufacturers. *Indiana International and Comparative Law Review* vol. 19, iss. 1 (2009): p. 137.

Colares, J. F. A Theory of WTO Adjudication: From Empirical Analysis to Biased Rule Development. *Vanderbilt Journal of Transnational Law* vol. 42, iss. 2 (2009): p. 383.

Condon, B. J. Climate Change and Unresolved Issues in WTO Law. *Journal of International Economic Law* vol. 12, iss. 4 (2009): p. 895.

Cote, C. Obstacles et ouvertures processuelles pour les acteurs prives defendant des interets non commerciaux dans l'interpretation des accords de l'OMC. *Cahiers de Droit* vol. 50, iss. 1 (2009): p. 207.

Davey, W. J. Compliance Problems in WTO Dispute Settlement. *Cornell International Law Journal* vol. 42, iss. 1 (2009): p. 119.

Dinwoodie, G. B., and R. C. Dreyfuss. Designing a Global Intellectual Property System Responsive to Change: The WTO, WIPO, and Beyond. *Houston Law Review* vol. 46, iss. 4 (2009): p. 1187.

Eliason, A. Science Versus Law in WTO Jurisprudence: The (Mis)Interpretation of the Scientific Process and the (in)Sufficiency of Scientific Evidence in *EC-Biotech*. *New York University Journal of International Law and Politics* vol. 41, iss. 2 (2009): p. 341.

Feichtner, I. The Waiver Power of the WTO: Opening the WTO for Political Debate on the Reconciliation of Competing Interests. *European Journal of International Law* vol. 20, iss. 3 (2009): p. 615.

Feldman, A. M. Evolving Treaty Obligations: A Proposal for Analyzing Subsequent Practice Derived from WTO Dispute Settlement. *New York University Journal of International Law and Politics* vol. 41, iss. 3 (2009): p. 655.

Fukunaga, Y. Discontinuity in the Internalization of the World Trade Organization Rules: Assessing the Democratic Deficit Critique Against the World Trade Organization Dispute Settlement System. *Alberta Law Review* vol. 46, iss. 4 (2009): p. 1039.

Galantucci, R. Compassionate Consumerism within the GATT Regime: Can Belgium's Ban on Seal Product Imports be Justified Under Article XX? *California Western International Law Journal* vol. 39, iss. 2 (2009): p. 281.

Gao, P. Rethinking the Relationship between the WTO and International Human Rights. *Richmond Journal of Global Law and Business* vol. 8, iss. 3 (2009): p. 397.

Gehring, M.W. WTO Law and Sustainable Development. In *Routledge Handbook of International Law.* Edited by D. Armstrong. (London [United Kingdom]: Routledge, 2009). p. 375.

Guzman, A. T. Determining the Appropriate Standard of Review in WTO Disputes. *Cornell International Law Journal* vol. 42, iss. 1 (2009): p. 45.

Haag, D. Time to Pay the Dues Or can Intellectual Property Rights Feel Safe with the WTO? *Richmond Journal of Global Law and Business* vol. 8, iss. 3 (2009): p. 427.

Hillman, J. Conflicts between Dispute Settlement Mechanisms in Regional Trade Agreements and the WTO—What should the WTO do? *Cornell International Law Journal* vol. 42, iss. 2 (2009): p. 193.

Howse, R., and E. Chalamish. The use and Abuse of WTO Law in Investor-State Arbitration: A Reply to Jurgen Kurtz. *European Journal of International Law* vol. 20, iss. 4 (2009): p. 1087.

Howse, R. Moving the WTO Forward—One Case at a Time. *Cornell International Law Journal* vol. 42, iss. 2 (2009): p. 223.

International Trade Law—Role of Dispute Settlement Decisions in WTO Law—WTO Appellate Body Reaffirms WTO—Inconsistency of 'Zeroing.' *Harvard Law Review* vol. 122, iss. 7 (2009): p. 1993.

Islam, M. R., and S. Alam. Preferential Trade Agreements and the Scope of GATT Article XXIV, GATS Article V and the Enabling Clause: An Appraisal of GATT/WTO Jurisprudence. *Netherlands International Law Review* vol. 56, iss. 1 (2009): p. 1.

Jackson, J.H. Process and Procedure in WTO Dispute Settlement. *Cornell International Law Journal* vol. 42, iss. 2 (2009): p. 233.

Joseph, S. Human Rights and the WTO: Issues for the Pacific. *Victoria University of Wellington Law Review* vol. 40, iss. 1 (2009): p. 351.

Kitt, D. What's Wrong with Volunteering? The Futility of the WTO's Ban on Voluntary Export Restraints. *Columbia Journal of Transnational Law* vol. 47, iss. 2 (2008): p. 359.

Kurtz, J. The use and Abuse of WTO Law in Investor-State Arbitration: Competition and its Discontents: A Rejoinder to Robert Howse and Efraim Chalamish. *European Journal of International Law* vol. 20, iss. 4 (2009): p. 1095.

La Chimia, A., and S. Arrowsmith. Addressing Tied Aid: Towards a More Development-Oriented WTO? *Journal of International Economic Law* vol. 12, iss. 3 (2009): p. 707.

Lang, A., and J. Scott. The Hidden World of WTO Governance. *European Journal of International Law* vol. 20, iss. 3 (2009): p. 575.

Lat, T. K. A. Testing the Limits of GATT Art. XX (b): Toxic Waste Trade, Japan's Economic Partnership Agreements, and the WTO. *Georgetown International Environmental Law Review* vol. 21, iss. 2 (2009): p. 367.

Maddalon, P. Les faits économiques dans les rapports de l'organe d'appel de l'OMC. *Revue générale de droit international public* vol. 113, iss. 2 (2009): p. 305.

Magee, C. Using *Chevron* as a Guide: Allowing for the Precautionary Principle in WTO Practices. *Georgetown International Environmental Law Review* vol. 21, iss. 3 (2009): p. 615.

McGrady, B. Necessity Exceptions in WTO Law: Retreaded Tyres, Regulatory Purpose and Cumulative Regulatory Measures. *Journal of International Economic Law* vol. 12, iss. 1 (2009): p. 153.

Mercurio, B. Reflections on the World Trade Organization and the Prospects for its Future. *Melbourne Journal of International Law* vol. 10, iss. 1 (2009): p. 49.

Miller, G. Exporting Morality with Trade Restrictions: The Wrong Path to Animal Rights. *Brooklyn Journal of International Law* vol. 34, iss. 3 (2009): p. 999.

Mitchell, A. D., and E. Sheargold. Global Governance: The World Trade Organization's Contribution. *Alberta Law Review* vol. 46, iss. 4 (2009): p. 1061.

Murray, C. Implementing the New International Health Regulations: The Role of the WTO's Sanitary and Phytosanitary Agreement. *Georgia Journal of International Law* vol. 40, iss. 2 (2009): p. 625.

Narlikar, A. Law and Legitimacy: the World Trade Organization. In *Routledge Handbook of International Law.* Edited by D. Armstrong. (London [United Kingdom]: Routledge, 2009). p. 294.

Neuwirth, R. J. The Fragmentation of the Global Market: The Case of Digital Versatile Discs (DVDs). *Cardozo Arts and Entertainment Law Journal* vol. 27, iss. 2 (2009): p. 409.

Okediji, R. WIPO-WTO Relations and the Future of Global Intellectual Property Norms. *Netherlands Yearbook of International Law* vol. 39 (2008): p. 69.

Osborn Wright, C. Toward a New Cultural Exemption in the WTO. In *Multiculturalism and International Law: Essays in Honour of Edward McWhinney.* Edited by S. Yee and J. Morin. (Leiden [the Netherlands]: Martinus Nijhoff, 2009). p. 649.

Payne, C. Local Meets Global: The Low Carbon Fuel Standard and the WTO. *North Carolina Journal of International Law and Commercial Regulation* vol. 34, iss. 3 (2009): p. 891.

Ribeiro, G. F. Navigating the Turbulent Waters Connecting the World Trade Organization and Corporate Social Responsibility. *Indiana Journal of Global Legal Studies* vol. 16, iss. 1 (2009): p. 249.

Ruiz Fabri, H., and P. Monnier. Organisation mondiale du commerce. Chronique du règlement des différends 2008–2009. *Journal du droit international*, iss. 3 (2009): p. 923.

Shih, W. Conflicting Jurisdictions Over Disputes Arising from the Application of Trade-Related Environmental Measures. *Richmond Journal of Global Law and Business* vol. 8, iss. 3 (2009): p. 351.

Sindico, F. Water Export Bans for Environmental Purposes before the WTO: A Reflection of the Difficult Relationship between Trade and Environment. *Revue Hellénique de droit international* (2007): p. 153.

Smith, B. W. Water as a Public Good: The Status of Water Under the General Agreement on Tariffs and Trade. *Cardozo Journal of International and Comparative Law* vol. 17, iss. 2 (2009): p. 291.

Steger, D. P. The Future of the WTO: The Case for Institutional Reform. *Journal of International Economic Law* vol. 12, iss. 4 (2009): p. 803.

Steinberg, R. H. The Hidden World of WTO Governance: A Reply to Andrew Lang and Joanne Scott. *European Journal of International Law* vol. 20, iss. 4 (2009): p. 1063.

Taniguchi, Y. The WTO Dispute Settlement as seen by a Proceduralist. *Cornell International Law Journal* vol. 42, iss. 1 (2009): p. 1.

Van Damme, I. Eighth Annual WTO Conference: An Overview. *Journal of International Economic Law* vol. 12, iss. 1 (2009): p. 175.

—. *Treaty Interpretation by the WTO Appellate Body.* (Oxford [United Kingdom]: Oxford University, 2009). 375 p.

Van den Bossche, P. NGO Involvement in the WTO: A Comparative Perspective. *Journal of International Economic Law* vol. 11, iss. 4 (2008): p. 717.

Veel, P. Carbon Tariffs and the WTO: An Evaluation of Feasible Policies. *Journal of International Economic Law* vol. 12, iss. 3. (2009): p.749.

Vranes, E. The WTO and Regulatory Freedom: WTO Disciplines on Market Access, Non-Discrimination and Domestic Regulation Relating to Trade in Goods and Services. *Journal of International Economic Law* vol. 12, iss. 4. (2009): p.953.

Windon, J. The Allocation of Free Emissions Units and the WTO Subsidies Agreement. *Georgetown Journal of International Law* vol. 41, iss. 1 (2009): p. 189.

Wolfe, R. The WTO Single Undertaking as Negotiating Technique and Constitutive Metaphor. *Journal of International Economic Law* vol. 12, iss. 4. (2009): p.835.

The WTO Appellate Body's Activities in 2008. *Journal of International Economic Law* vol. 12, iss. 1 (2009): p. 209.

Unterhalter, D. Allocating the Burden of Proof in WTO Dispute Settlement Proceedings. *Cornell International Law Journal* vol. 42, iss. 2 (2009): p. 208.

Zang, D. Divided by Common Language: Capture Theories in GATT/WTO and the Communicative Impasse. *Hastings International and Comparative Law* vol. 32, iss. 2 (2009): p. 423.

Zang, M.Q. The WTO Contingent Trade Instruments Against China: What does Accession Bring? *International and Comparative Law Quarterly* vol. 58, iss. 2. (2009): p.321.

D. Other legal issues

1. Aviation law

Rushing, D.G., and E.N. Adler. Some Inconvenient Truths about *Forum Non Conveniens* Law in International Aviation Disasters. *The Journal of Air Law and Commerce* vol. 74, iss. 2 (2009): p. 403.

2. Commercial arbitration

Blane, A. Sovereign Immunity as a Bar to the Execution of International Arbitral Awards. *New York University Journal of International Law and Politics* vol. 41, iss. 2: p. 453.

Franck, S. D. Development and Outcomes of Investment Treaty Arbitration. *Harvard International Law Journal* vol. 50, iss. 2 (2009): p. 435.

Grisel, F., and J. E. Vinuales. L'*amicus curiae* dans l'arbitrage d'investissement. *ICSID Review Foreign Investment Law Journal* vol. 22, iss. 2 (2007): p. 380.

Hayward, B. New Dog, Old Tricks: Solving a Conflict of Laws Problem in CISG Arbitrations. *Journal of International Arbitration* vol. 26, iss. 3 (2009): p. 405.

Horvath, E. A Handy Tool for the Settlement of International Commercial Disputes. *Penn State International Law Review* vol. 27, iss. 3–4 (2008): p. 783.

Sénéchal, T.J., and J. Y. Gotanda. Interest as Damages. *Columbia Journal of Transnational Law* vol. 47, iss. 3 (2009): p. 491.

Spoorenberg, F., and J. E. Vinuales. Conflicting Decisions in International Arbitration. *The Law and Practice of International Courts and Tribunals* vol. 8, iss. 1 (2009): p. 91.

3. Consular relations

Kolesnikov, Y.A. Meddling with the Vienna Convention on Consular Relations: The Dilemma and Proposed Statutory Solutions. *McGeorge Law Review* vol. 40, iss. 1 (2009): p. 179–225.

Lyons, S.W. Breach without Remedy in International Forum and the Need for Self-Help: The Conundrum Resulting from *Medellin* Case. *Lewis and Clark Law Review* vol. 13, iss. 1 (2009): p. 73–98.

McGinnis, J.O. *Medellin* and the Future of International Delegation. *Yale Law Journal* vol. 118, iss. 8 (2009): p. 1712.

Powell, L.A. User Fee or Tax: Does Diplomatic Immunity from Taxation Extend to New York City's Proposed Congestion Charge. *Emory International Law Review* vol. 23, iss. 1 (2009): p. 231.

Quigley, J. The United States' Withdrawal from International Court of Justice Jurisdiction in Consular Cases: Reasons and Consequences. *Duke Journal of Comparative and International Law* vol. 19, iss. 2 (2008): p. 263–305.

4. Definition of aggression

Clark, R.S. The Crime of Aggression. In *The Emerging Practice of the International Criminal Court*. Edited by C. Stahn and G. Sluiter. (Leiden [the Netherlands]: Nijhoff, 2009). p. 709.

Drumbl, M.A. The Push to Criminalize Aggression: Something Lost Amid the Gains. *Case Western Reserve Journal of International Law* vol. 41, iss. 2–3 (2009): p. 291.

Ferencz, B.B. Ending Impunity for the Crime of Aggression. *Case Western Reserve Journal of International Law* vol. 41, iss. 2–3 (2009): p. 281.

Ferencz, D.M. Addendum to the Aggression Issue: Bringing the Crime of Aggression within the Active Jurisdiction of the ICC. *Case Western Reserve Journal of International Law* vol. 42, iss. 1–2 (2009): p. 531.

Kemp, G. Constitutionalization and the International Criminal Court: Whither Individual Criminal Liability for Aggression? *South African Law Journal* vol. 125, iss. 4 (2009): p. 694.

Leclerc-Gagne, E., and M. Byers. A Question of Intent: The Crime of Aggression and Unilateral Humanitarian Intervention. *Case Western Reserve Journal of International Law* vol. 41, iss. 2–3 (2009): p. 379.

Reisinger Coracini, A. Evaluating Domestic Legislation on the Customary Crime of Aggression Under the Rome Statute's Complementarity Regime. In *The Emerging Practice of the International Criminal Court*. Edited by C. Stahn and G. Sluiter. (Leiden [The Netherlands]: Nijhoff, 2009). p. 725.

Report of the Cleveland Experts Meeting: The International Criminal Court and the Crime of Aggression. *Case Western Reserve Journal of International Law* vol. 41, iss. 2–3 (2009): p. 429.

Sayapin, S. A Great Unknown: The Definition of Aggression Revisited. *Michigan State Journal of International Law* vol. 17, iss. 2 (2008): p. 377.

Schaeffer, R. The Audacity of Compromise: The UN Security Council and the Pre-Conditions to the Exercise of Jurisdiction by the ICC with Regard to the Crime of Aggression. *International Criminal Law Review* vol. 9, iss. 2 (2009): p. 411.

Scheffer, D. A Pragmatic Approach to Jurisdictional and Definitional Requirements for the Crime of Aggression in the Rome Statute. *Case Western Reserve Journal of International Law* vol. 41, iss. 2–3 (2009): p. 397.

Verbitsky, J. What should be the Relationship between the International Criminal Court and the United Nations Security Council in the Crime of Aggression? *USAK Yearbook of International Politics and Law* (2009): p. 45.

5. Diplomatic relations

Gaeta, P. Immunities and Genocide. In *The UN Genocide Convention: A Commentary*. Edited by P. Gaeta. (Oxford [United Kingdom]: Oxford University Press, 2009). p. 310–333.

Roberts, I., and E.M. Satow. *Satow's Diplomatic Practice*. 6th ed. (Oxford [United Kingdom]: Oxford University Press, 2009). 600 p.

6. Disarmament

Cottrell, M.P. Legitimacy and Institutional Replacement: The Convention on Certain Conventional Weapons and the Emergence of the Mine Ban Treaty. *International Organization* vol. 63, iss. 2 (2009): p. 217.

David, E. La Convention de 2008 sur les armes à sous-munitions. *Revue générale de droit international public* vol. 113, iss. 4 (2009): p. 785.

de Greiff, P. DDR and Reparations: Establishing Links between Peace and Justice Instruments. In *Building a Future on Peace and Justice*. Edited by K. Ambos, J. Large, and M. Wierda. (Berlin [Germany]: Springer, 2009). p. 321.

Joyner, D. *International Law and the Proliferation of Weapons of Mass Destruction*. (Oxford [United Kingdom]: Oxford University, 2009). 378 p.

Muggah, R. Disarmament, Demobilization, and Reintegration. In *Post-Conflict Peacebuilding: A Lexicon*. Edited by V. Chetail. (Oxford [United Kingdom]: Oxford University, 2009). p. 123.

Nanda, V.P. Nuclear Weapons, Human Security, and International Law. *Denver Journal of International Law and Policy* vol. 37, iss. 3 (2009): p. 331.

Wright, T. Negotiations for a Nuclear Weapons Convention: Distant Dream Or Present Possibility? *Melbourne Journal of International Law* vol. 10, iss. 1 (2009): p. 217.

7. Environmental questions

Birnie, P., A. Boyle, and C. Redgwell. *International Law and the Environment*. 3rd ed. (Oxford [United Kingdom]: Oxford, 2009). 830 p.

Cordonier Segger, M. Sustainable Development in International Law. In *Routledge Handbook of International Law*. Edited by D. Armstrong. (London [United Kingdom]: Routledge, 2009). p. 355.

Docherty, B., and T. Giannini. Confronting a Rising Tide: A Proposal for a Convention on Climate Change Refugees. *Harvard Environmental Law Review* vol. 33, iss. 2 (2009): p. 349–403.

Freestone, D., and C. Streck. *Legal Aspects of Carbon Trading: Kyoto, Copenhagen, and Beyond*. (Oxford [United Kingdom]: Oxford University, 2009). 657 p.

Godden, L. Death, Desire, Modernity and Redemption: Climate Change and Public International Environmental Law. *Melbourne Journal of International Law* vol. 10, iss. 2 (2009): p. 543–578.

Green, B.A. Lessons from the Montreal Protocol: Guidance for the Next International Climate Change Agreement. *Environmental Law* vol. 39, iss. 1 (2009): p. 253.

Headon, S. Whose Sustainable Development? Sustainable Development Under the Kyoto Protocol, the 'Coldplay Effect,' and the CDM Gold Standard. *Colorado Journal of International Environmental Law and Policy* vol. 20, iss. 2 (2009): p. 127.

Honkonen, T. *The Common but Differentiated Responsibility Principle in Multilateral Environmental Agreements: Regulatory and Policy Aspects*. (Alphen aan den Rijn [The Netherlands]: Kluwer Law International, 2009). 410 p.

Lammers, J.G. Equity in International Environmental Law and the Special Position of Developing Countries. In *Hague Yearbook of International Law = Annuaire de La Haye de droit international.* (Leiden [The Netherlands]: Martinus Nijhoff, 2008). p. 9.

McNeely, J.A. Applying the Diversity of International Conventions to Address the Challenges of Climate Change. *Michigan State Journal of International Law* vol. 17, iss. 1 (2008): p. 123–138.

Mitchell, R. International Environmental Agreements: A Survey of their Features, Formation, and Effects. In *International Law: Classic and Contemporary Readings.* Edited by C. Ku and P.F. Diehl. 3rd ed. (Boulder, Colorado [United States]: Lynne Rienner, 2008). p. 341.

Nash, J.R. Beyond Kyoto: The Treatment of Outliers. *U.C. Davis Journal of International Law and Policy* vol. 15, iss. 1 (2008): p. 31–42.

Peterson, I. The Natural Environment in Times of Armed Conflict: A Concern for International War Crimes Law? *Leiden Journal of International Law* vol. 22, iss. 2 (2009): p. 325.

Petsonk, A. Docking Stations: Designing a More Welcoming Architecture for a Post-2012 Framework to Combat Climate Change. *Duke Journal of Comparative and International Law* vol. 19, iss. 3 (2008): p. 433.

Rajamani, L. Addressing the 'Post-Kyoto' Stress Disorder: Reflections on the Emerging Legal Architecture of the Climate Regime. *International and Comparative Law Quarterly* vol. 58, iss. 4 (2009): p. 803.

Richardson, B.J. Climate Finance and its Governance: Moving to a Low Carbon Economy through Socially Responsible Financing? *International and Comparative Law Quarterly* vol. 58, iss. 3 (2009): p. 597.

Roberts, M.W., and P.M. Grabiel. A Window of Opportunity: Combating Climate Change by Amending the Montreal Protocol to Regulation the Production and Consumption of HFCs and ODS Banks. *Georgetown International Environmental Law Review* vol. 22, iss. 1 (2009): p. 99–155.

Sielen, A. The New International Rules on Ocean Dumping: Promise and Performance. *Georgetown International Environmental Law Review* vol. 21, iss. 3 (2009): p. 495–615.

Smyth, S. A Practical Guide to Creating a Collective Financing Effort to Save the World: The Global Environment Facility Experience. *Georgetown International Environmental Law Review* vol. 22, iss. 1 (2009): p. 29–97.

Stephens, T. *International Courts and Environmental Protection*. (Cambridge [United Kingdom]: Cambridge University, 2009). 410 p.

Tinker, C. Responsibility for Biological Diversity Conservation Under International Law. In *International Law: Classic and Contemporary Readings.* Edited by C. Ku and P.F. Diehl. 3rd ed. (Boulder, Colorado [United States]: Lynne Rienner, 2008). p. 371.

van der Vyver, Johan D. The Environment: State Sovereignty, Human Rights, and Armed Conflict. *Emory International Law Review* vol. 23, iss. 1 (2009): p. 85.

Voigt, C. Sustainable Security. *Yearbook of International Environmental Law* vol. 19: 2008 (2009): p. 163–196.

Wiersema, A. The New International Law-Makers? Conferences of the Parties to Multilateral Environmental Agreements. *Michigan Journal of International Law* vol. 31, iss. 1 (2009): p. 231–287.

8. Friendly relations and cooperation among States

Köchler, H. Civilizational Paradigm in Contemporary International Law. In *Multiculturalism and International Law: Essays in Honour of Edward McWhinney.* Edited by S. Yee and J. Morin. (Leiden [The Netherlands]: Martinus Nijhoff, 2009). p. 65.

van Aggelen, J. The Shift in the Perception of Multiculturalism at the United Nations since 1945. In *Multiculturalism and International Law: Essays in Honour of Edward McWhinney.* Edited by S. Yee and J. Morin. (Leiden [The Netherlands]: Martinus Nijhoff, 2009). p. 169.

9. Human rights

Allen, S. The UN Declaration on the Rights of Indigenous Peoples: Towards a Global Legal Order on Indigenous Rights? In *Theorising the Global Legal Order.* Edited by A. Halpin and V. Roeben. (Oxford [United Kingdom]: Hart, 2009). p. 278.

Allen, S., and A. Xanthaki. *Reflections on the UN Declaration on the Rights of Indigenous Peoples*. (Oxford [United Kingdom]: Hart, 2009). 466 p.

Álvarez Molinero, N. The International Convention on Elimination of all Forms of Racial Discrimination and the Evolution of the Concept of Racial Discrimination. In *International Human Rights Law in a Global Context.* Edited by I. Felipe Gómez and K. de Feyter. (Bilbao [Spain]: University of Deusto, 2009). p. 351.

Ando, N. Multiculturalism and the Human Rights Committee. In *Multiculturalism and International Law: Essays in Honour of Edward McWhinney.* Edited by S. Yee and J. Morin. (Leiden [The Netherlands]: MartinusNijhoff, 2009). p. 329.

Ashley Stein, M., and J.E. Lord. The United Nations Convention on the Rights of Persons with Disabilities: Process, Substance, and Prospects. In *International Human Rights Law in a Global Context.* Edited by I. Felipe Gómez and K. de Feyter. (Bilbao [Spain]: University of Deusto, 2009). p. 495.

Banks, A.M. CEDAW, Compliance, and Custom: Human Rights Enforcement in Sub-Saharan Africa. *Fordham International Law Journal* vol. 32, iss. 3 (2009): p. 781–845.

Barelli, M. The Role of Soft Law in the International Legal System: The Case of the United Nations Declaration on the Rights of Indigenous Peoples. *International and Comparative Law Quarterly* vol. 58, iss. 4 (2009): p. 803.

Barry, J.E. Apostasy, Marriage, and Jurisdiction in *Lina Joy*: Where was CEDAW? *New York University Journal of International Law and Politics* vol. 41, iss. 2: p. 407.

Baxi, U. Does Life Indeed Begin at Sixty? Revisiting the UDHR as a Single Garment of Destiny in a Hyperglobalizing World. *Emory International Law Review* vol. 23, iss. 1 (2009): p. 25.

Bernhardt, R. International Protection of Human Rights: Universalism and Regionalism. In *Multiculturalism and International Law: Essays in Honour of Edward McWhinney.* Edited by S. Yee and J. Morin. (Leiden [The Netherlands]: Martinus Nijhoff, 2009). p. 467.

Boerefijn, I. Establishing State Responsibility for Breaching Human Rights Treaty Obligations: Avenues Under UN Human Rights Treaties. *Netherlands International Law Review* vol. 56, iss. 2 (2009): p. 167–205.

Boyle, K. *New Institutions for Human Rights Protection.* (Oxford [United Kingdom]: Oxford University, 2009). 217 p.

—. The United Nations Human Rights Council: Politics, Power, and Human Rights. *Northern Ireland Legal Quarterly* vol. 60, iss. 2 (2009): p. 121–133.

Buergenthal, T. The Evolving International Human Rights System. In *International Law: Classic and Contemporary Readings.* Edited by C. Ku and P.F. Diehl. 3rd ed. (Boulder, Colorado [United States]: Lynne Rienner, 2008). p. 289.

Calvet Martínez, E. The International Convention for the Protection of all Persons from Enforced Disappearance. In *International Human Rights Law in a Global Context.* Edited by I. Felipe Gómez and K. de Feyter. (Bilbao [Spain]: University of Deusto, 2009). p. 515.

Carey, J. The U.N. Human Rights Council: What would Eleanor Roosevelt Say? *ILSA Journal of International and Comparative Law* vol. 15, iss. 2 (2009): p. 459–470.

Clech Lâm, M. We the [Indigenous] Peoples of the United Nations. In *Multiculturalism and International Law: Essays in Honour of Edward McWhinney.* Edited by S. Yee and J. Morin. (Leiden [The Netherlands]: Martinus Nijhoff, 2009). p. 589.

Conte, A., and R. Burchill. *Defining Civil and Political Rights: The Jurisprudence of the United Nations Human Rights Committee*. 2nd ed. (Farnham [United Kingdom]: Ashgate, 2009). 359 p.

Cook, S. Security Council Resolution 1820: On Militarism, Flashlights, Raincoats, and Rooms with Doors—A Political Perspective on where it Came from and what it Adds. *Emory International Law Review* vol. 23, iss. 1 (2009): p. 125.

Coomans, F. The International Covenant on Economic, Social and Cultural Rights. In *International Human Rights Law in a Global Context.* Edited by I. Felipe Gómez and K. de Feyter. (Bilbao [Spain]: University of Deusto, 2009). p. 293.

Coulter, R.T. The U.N. Declaration on the Rights of Indigenous Peoples: A Historic Change in International Law. *Idaho Law Review* vol. 45, iss. 3 (2009): p. 539–553.

Darrow, M., and L. Arbour. The Pillar of Glass: Human Rights in the Development Operations of the United Nations. *American Journal of International Law* vol. 103, iss. 3 (2009): p. 446.

De Beco, G. Le Protocole facultatif a la Convention contre la torture et autres peines ou traitements cruels, inhumains ou dégradants du 18 décembre 2002: l'instauration de mécanismes de visites des lieux de détention au niveau national et international. *Revue belge de droit international* vol. XL, iss. 2 (2007): p. 401.

De Feyter, K. Globalisation and Human Rights. In *International Human Rights Law in a Global Context.* Edited by I. Felipe Gómez and K. de Feyter. (Bilbao [Spain]: University of Deusto, 2009). p. 51.

de Wolf, A.H., and J. Watson. Navigating the Boundaries of Prevention: The Role of OPCAT in Deportations with Diplomatic Assurances. *Netherlands Quarterly of Human Rights* vol. 27, iss. 4 (2009): p. 525–566.

Degan, V. Two Faces of Multiculturalism in Present International Law. In *Multiculturalism and International Law: Essays in Honour of Edward McWhinney.* Edited by S. Yee and J. Morin. (Leiden [The Netherlands]: Martinus Nijhoff, 2009). p. 517.

Del Prado, J.L.G., and M. Maffai. United Nations Working Group on the use of Mercenaries as a Means of Violating Human Rights and Impending the Exercise of the Rights of People to Self Determination and the Wisconsin International Law Society: Model Law for the Regulation of Private Military and Security Companies. *Wisconsin International Law Journal* vol. 26, iss. 4 (2008): p. 1078–1094.

Engle, K. Indigenous Rights Claims in International Law: Self-Determination, Culture and Development. In *Routledge Handbook of International Law.* Edited by D. Armstrong. (London [United Kingdom]: Routledge, 2009). p. 331.

Everett, J.C. The Battle Continues: Fighting for a More Child-Sensitive Approach to Asylum for Child Soldiers. *Florida Journal of International Law* vol. 21, iss. 2 (2009): p. 285–356.

Fischer-Lescano, A., T. Lohr, and T. Tohidipur. Border Controls at Sea: Requirements Under International Human Rights and Refugee Law. *International Journal of Refugee Law* vol. 21, iss. 2 (2009): p. 256.

Flood, P.J. The U.N. Human Rights Council: Is its Mandate Well-Designed? *ILSA Journal of International and Comparative Law* vol. 15, iss. 2 (2009): p. 471.

Foster, M. Non-Refoulement on the Basis of Socio-Economic Deprivation: The Scope of Complementary Protection in International Human Rights Law. *New Zealand Law Review*, iss. 2 (2009): p. 257.

Foster, S.E. Prelude to Compatibility between Human Rights and Intellectual Property. *Chicago Journal of International Law* vol. 9, iss. 1 (2008): p. 171–212.

Gallagher, A.T. Human Rights and Human Trafficking: Quagmire Or Firm Ground? A Response to James Hathaway. *Virginia Journal of International Law* vol. 49, iss. 4 (2009): p. 789.

Gao, P. Rethinking the Relationship between the WTO and International Human Rights. *Richmond Journal of Global Law and Business* vol. 8, iss. 3 (2009): p. 397.

Gómez del Prado, José Luis. Extra-Conventional Protection of Human Rights. In *International Human Rights Law in a Global Context*. Edited by I. Felipe Gómez and K. de Feyter. (Bilbao [Spain]: University of Deusto, 2009). p. 557.

Gómez Isa, F. The Convention on the Elimination of all Forms of Discrimination Against Women and its Optional Protocol. In *International Human Rights Law in a Global Context*. Edited by I. Felipe Gómez and K. de Feyter. (Bilbao [Spain]: University of Deusto, 2009). p. 373.

Gómez Isa, F., and K. de Feyter. *International Human Rights Law in a Global Context*. (Bilbao [Spain]: University of Deusto, 2009). 973 p.

Hainsfurther, J.S. A Rights-Based Approach: Using CEDAW to Protect the Human Rights of Migrant Workers. *American University International Law Review* vol. 24, iss. 5 (2009): p. 843.

Hakimi, M. Secondary Human Rights Law. *Yale Journal of International Law* vol. 34, iss. 2 (2009): p. 596.

Heinamaki, L. Protecting the Rights of Indigenous Peoples—Promoting the Sustainability of the Global Environment? *International Community Law Review* vol. 11, iss. 1 (2009): p. 3.

Indigenous Voices: The UN Declaration on the Rights of Indigenous Peoples. Edited by C. Charters, L. Malezer, and V. Tauli-Corpuz. (Oxford [United Kingdom]: Hart, 2009). 256 p.

International Human Rights Law in a Global Context. Edited by F.G. Isa, and K. de Feyter. (Bilbao [Spain]: University of Deusto, 2009). 973 p.

International Human Rights Monitoring Mechanisms: Essays in Honour of Jakob Th. Möller Edited by G. Alfredsson. 2nd ed. (Leiden [The Netherlands]: Martinus Nijhoff, 2009).

Isanga, J. Counter-Terrorism and Human Rights: The Emergence of A Rule of Customary International Law from UN Resolutions. *Denver Journal of International Law and Policy* vol. 37, iss. 2 (2009): p. 233.

Jivan, V., and C. Forster. Challenging Conventions: In Pursuit of Greater Legislative Compliance with CEDAW in the Pacific. *Melbourne Journal of International Law* vol. 10, iss. 2 (2009): p. 655.

Joosten, V. The UN Human Rights Council at Work: A Provisional Appraisal of the Council's Institution-Building Work. *Studia Diplomatica The Brussels Journal of International Relations* vol. LXII, iss. 1 (2009): p. 139.

Kempin Reuter, T. Dealing with Claims of Ethnic Minorities in International Law. *Connecticut Journal of International Law* vol. 24, iss. 2 (2009): p. 201.

Kirby, M. Herbert Vere Evatt, the United Nations and the Universal Declaration of Human Rights After 60 Years. *University of Western Australia Law Review* vol. 34, iss. 2 (2009): p. 238–260.

—. Human Rights and Bioethics: The Universal Declaration of Human Rights and UNESCO Universal Declaration of Bioethics and Human Rights. *The Journal of contemporary health law and policy* vol. 25, iss. 2 (2009): p. 309.

Knox, J.H. Linking Human Rights and Climate Change at the United Nations. *Harvard Environmental Law Review* vol. 33, iss. 2 (2009): p. 477.

Lee, Y. Expanding Human Rights to Persons with Disabilities: Laying the Groundwork for a Twenty-First Century Movement. *Pacific Rim Law and Policy Journal* vol. 18, iss. 1 (2009): p. 283.

Macklem, P. Indigenous Recognition in International Law: Theoretical Observations. *Michigan Journal of International Law* vol. 30, iss. 1 (2008): p. 177–210.

Mariño Menéndez, F.M. The Convention Against Torture and its Optional Protocol. In *International Human Rights Law in a Global Context.* Edited by F. Gómez Isa and K.d. Feyter. (Bilbao [Spain]: University of Deusto, 2009). p. 413.

Márquez Carrasco, C., and I. Nifosi Sutton. From the Commission on Human Rights to the Human Rights Council. In *International Human Rights Law in a Global Context.* Edited by F. Gómez Isa and K.d. Feyter. (Bilbao [Spain]: University of Deusto, 2009). p. 237.

Mechlem, K. Treaty Bodies and the Interpretation of Human Rights. *Vanderbilt Journal of Transnational Law* vol. 42, iss. 3 (2009): p. 905.

Melish, T. J. From Paradox to Subsidiarity: The United States and Human Rights Treaty Bodies. *Yale Journal of International Law* vol. 34, iss. 2 (2009): p. 389.

Mendez, J. E. The 60th Anniversary of the UDHR. *University of Pennsylvania Journal of International Economic Law* vol. 30, iss. 4 (2009): p. 1157–1170.

Mertus, J. *The United Nations and Human Rights: A Guide for a New Era*. 2nd ed. (London [United Kingdom]: Routledge, 2009). 202 p.

Oraá, J. The Universal Declaration of Human Rights. In *International Human Rights Law in a Global Context.* Edited by I. Felipe Gómez and K. de Feyter. (Bibao [Spain]: University of Deusto, 2009). p. 163.

Otto, D. The Exile of Inclusion: Reflections on Gender Issues in International Law Over the Last Decade. *Melbourne Journal of International Law* vol. 10, iss. 1 (2009): p. 11–26.

Pasqualucci, J. M. International Indigenous Land Rights: A Critique of the Jurisprudence of the Inter-American Court of Human Rights in Light of the United Nations Declaration on the Rights of Indigenous Peoples. *Wisconsin International Law Journal* vol. 27, iss. 1 (2009): p. 51.

Pentassuglia, G. Evolving Protection of Minority Groups: Global Challenges and the Role of International Jurisprudence. *International Community Law Review* vol. 11, iss. 2 (2009): p. 185.

—. *Minority Groups and Judicial Discourse in International Law: A Comparative Perspective*. (Leiden [The Netherlands]: Martinus Nijhoff, 2009). 276 p.

Perlin, M.L. 'A Change is Gonna Come': The Implications of the United Nations Convention on the Rights of Persons with Disabilities for the Domestic Practice of Constitutional Mental Disability Law. *Northern Illinois University Law Review* vol. 29, iss. 3 (2009): p. 483.

Pruitt, L.R. Migration, Development, and the Promise of CEDAW for Rural Women. *Michigan Journal of International Law* vol. 30, iss. 3 (2009): p. 707.

Ramakrishna, R. Universal Rights, Non-Universal Process: Confronting Culturally Grounded Human Rights Abuses. *University of Pennsylvania Journal of International Economic Law* vol. 30, iss. 4 (2009): p. 1383.

Rodley, N. S., and M. Pollard. *The Treatment of Prisoners Under International Law*. (Oxford [United Kingdom]: Oxford University Press, 2009).

Salado-Osuna, A. The Fight Against Terrorism: International Human Rights Monitoring and Protection Organs. In *International Legal Dimension of Terrorism*. Edited by P.A. Fernández Sánchez. (Leiden [The Netherlands]: Martinus Nijhoff, 2009). p. 389.

Sarfaty, G. A. Why Culture Matters in International Institutions: The Marginality of Human Rights at the World Bank. *American Journal of International Law* vol. 103, iss. 4 (2009): p. 647–683.

Schabas, W. A. International Human Rights Law and the Charter. *Supreme Court Law Review* vol. 45 (2009): p. 297–322.

Scully, P. Vulnerable Women: A Critical Reflection on Human Rights Discourse and Sexual Violence. *Emory International Law Review* vol. 23, iss. 1 (2009): p. 113.

Ssenyonjo, M. *Economic, Social and Cultural Rights in International Law*. (Oxford [United Kingdom]: Hart, 2009). 744 p.

Tavakoli, N. A Crime that Offends the Conscience of Humanity: A Proposal to Reclassify Trafficking in Women as an International Crime. *International Criminal Law Review* vol. 9, iss. 1 (2009): p. 77.

van der Vyver, Johan D. The Environment: State Sovereignty, Human Rights, and Armed Conflict. *Emory International Law Review* vol. 23, iss. 1 (2009): p. 85.

Vandenhole, W. The Convention on the Rights of the Child. In *International Human Rights Law in a Global Context*. Edited by I. Felipe Gómez and K. de Feyter. (Bilbao [Spain]: University of Deusto, 2009). p. 451.

Vanheule, D. The International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families. In *International Human Rights Law in a Global Context*. Edited by I. Felipe Gómez and K. de Feyter. (Bilbao [Spain]: University of Deusto, 2009). p. 473.

Wabwile, M. Re-Examining States' External Obligations to Implement Economic and Social Rights of Children. *Canadian Journal of Law and Jurisprudence* vol. 22, iss. 2 (2009): p. 407.

Watkins, J.L. The Right to Reparations in International Human Rights Law and the Case of Bahrain. *Brooklyn Journal of International Law* vol. 34, iss. 2 (2008): p. 559.

Weckel, P. La justice internationale et le soixantième anniversaire de la Déclaration universelle des droits de l'homme. *Revue generale de droit international public* vol. 113, iss. 1 (2009): p. 5.

Weissbrodt, D.S., et al. *Selected International Human Rights Instruments and Bibliography for Research on International Human Rights*. 4th ed. (Newark, New Jersey [United States]: LexisNexis, 2009). 737 p.

Westra, L. Ecological Integrity and Biological Integrity: The Right to Life and the Right to Health in Law. *Transnational Law and Contemporary Problems* vol. 18, iss. 1 (2009): p. 3.

Xanthaki, A. Indigenous Rights in International Law Over the Last 10 Years and Future Developments. *Melbourne Journal of International Law* vol. 10, iss. 1 (2009): p. 27.

10. International administrative law

Buhmann, K. Regulating Corporate Social and Human Rights Responsibilities at the UN Plane: Institutionalising New Forms of Law and Law-Making Approaches? *Nordic Journal of International Law* vol. 78, iss. 1 (2009): p. 1–52.

Dantiki, S. Power through Process: An Administrative Law Framework for United Nations Legislative Resolutions. *Georgetown Journal of International Law* vol. 40, iss. 2 (2009): p. 655.

Gillette, A. La cour des comptes, commissaire aux comptes d'organisations internationales. *Revue française d'administration publique*, iss. 126 (2008): p. 319–332.

Radi, Y. La réforme du système de justice interne de l'organisation des Nations Unies. *Revue française d'administration publique*, iss. 126 (2008): p. 307.

Vicien-Milburn, M. Promoting the Rule of Law within the United Nations. *International Lawyer* vol. 43, iss. 1 (2009): p. 51.

11. International commercial law

Alba, M. Electronic Commerce Provisions in the UNCITRAL Convention on Contracts for the International Carriage of Goods Wholly Or Partly by Sea. *Texas International Law Journal* vol. 44, iss. 3 (2009): p. 387.

Baatz, Y. *The Rotterdam Rules: A Practical Annotation*. (London [United Kingdom]: Informa Maritime Law, 2009). 348 p.

Boss, A. H. The Evolution of Commercial Law Norms: Lessons to be Learned from Electronic Commerce. *Brooklyn Journal of International Law* vol. 34, iss. 3 (2009): p. 673.

Bovio, D. M. Ocean Carriers' Duty of Care to Cargo in Port: The Rotterdam Rules of 2009. *Fordham International Law Journal* vol. 32, iss. 4 (2009): p. 1162.

Faria, J.,Angelo Estrella. Uniform Law for International Transport at UNCITRAL: New Times, New Players, and New Rules. *Texas International Law Journal* vol. 44, iss. 3 (2009): p. 277.

Gabriel, H.D. The Advantages of Soft Law in International Commercial Law: The Role of UNIDROIT, UNCITRAL, and the Hague Conference. *Brooklyn Journal of International Law* vol. 34, iss. 3 (2008): p. 655.

Honnold, J.O. *Uniform Law for International Sales Under the 1980 United Nations Convention*. Edited by H.M. Flechtner. 4th ed. (Alphen aan den Rijn [The Netherlands]: Kluwer Law International, 2009). 713 p.

Hooper, C.D. Forum Selection and Arbitration in the Draft Convention on Contracts for the International Carriage of Goods Wholly Or Partly by Sea, Or the Definition of *Fora Conveniens* Set Forth in the Rotterdam Rules. *Texas International Law Journal* vol. 44, iss. 3 (2009): p. 417.

Karton, J.D.H., and L. de Germiny. Has the CISG Advisory Council Come of Age? *Berkeley Journal of International Law* vol. 27, iss. 2 (2009): p. 448.

Kee, C., and E. Munoz. In Defence of the CISG. *Deakin Law Review* vol. 14, iss. 1 (2009): p. 99.

Martin-Davidson, S. Selling Goods Internationally: Scope of the U.N. Convention on Contracts for the International Sale of Goods. *Journal of International Law* vol. 17, iss. 3 (2009): p. 657.

Schelin, J. The UNCITRAL Convention on Carriage of Goods by Sea: Harmonization Or De-Harmonization? *Texas International Law Journal* vol. 44, iss. 3 (2009): p. 321.

Schlechtriem, P., and P. Butler. *UN Law on International Sales: The UN Convention on the International Sale of Goods*. (Berlin [Germany]: Springer, 2009). 351 p.

Schwenzer, I., and P. Hachem. The CISG—Successes and Pitfalls. *American Journal of Comparative Law* vol. 57, iss. 2 (2009): p. 457–478.

Schwenzer, I. *Force Majeure* and Hardship in International Sales Contracts. *Victoria University of Wellington Law Review* vol. 39, iss. 4 (2009): p. 709.

van der Ziel, G. Chapter 10 of the Rotterdam Rules: Control of Goods in Transit. *Texas International Law Journal* vol. 44, iss. 3 (2009): p. 375.

Vasseur, A. Gap-Filling of the CISG by the UNIDROIT Principles of International Commercial Contracts. *Uniform law review = Revue de droit uniforme* vol. XIV, iss. 1/2 (2009): p. 119.

Vogenauer, S., and J. Kleinheisterkamp. *Commentary on the UNIDROIT Principles of International Commercial Contracts*. (Oxford [United Kingdom]: Oxford University, 2009). 1319 p.

Yackee, J. W. *Pacta Sunt Servanda* and State Promises to Foreign Investors before Bilateral Investment Treaties: Myth and Reality. *Fordham International Law Journal* vol. 32, iss. 5 (2008): p. 1550.

Zeller, B. *Damages Under the Convention on Contracts for the International Sale of Goods*. 2nd ed. (New York [United States]: Oxford University, 2009). 269 p.

12. International criminal law

Abtahi, H., and P. Webb. *The Genocide Convention: The Travaux Préparatoires*. (Leiden [The Netherlands]: Nijhoff, 2008).

Al-Hussein, Z. R. Z. For Love of Country and International Criminal Law. *American University International Law Review* vol. 24, iss. 4 (2008): p. 647.

Anderson, K. The Rise of International Criminal Law: Intended and Unintended Consequences. *European Journal of International Law* vol. 20, iss. 2 (2009): p. 331.

Azubuike, L. International Law Regime Against Piracy. *Annual Survey of International and Comparative Law* vol. 15, iss. 1 (2009): p. 43.

Bales, E. Torturing the Rome Statute: The Attempt to Bring Guantanamo's Detainees within the Jurisdiction of the International Criminal Court. *Tulsa Journal of Comparative and International Law* vol. 16, iss. 2 (2009): p. 173.

Bianchi, A. State Responsibility and Criminal Liability of Individuals. In *The Oxford Companion to International Criminal Justice*. Edited by A. Cassese. (New York [United States]: Oxford University Press, 2009). p. 16–24.

Cherkassky, L. Genocide: Punishing a Moral Wrong. *International Criminal Law Review* vol. 9, iss. 2 (2009): p. 301.

Crane, D. M. Boxed in: Semantic Indifference to Atrocity. *Case Western Reserve Journal of International Law* vol. 40, iss. 1–2 (2007): p. 137.

—. A Wrong on Humanity: Prevention of Crimes Against Humanity. *University of Pennsylvania Journal of International Economic Law* vol. 30, iss. 4 (2009): p. 1265.

Critchlow, G. A. Stopping Genocide through International Agreement when the Security Council Fails to Act. *Georgetown Journal of International Law* vol. 40, iss. 2 (2009): p. 311.

Davies, T. E. How the Rome Statute Weakens the International Prohibition on Incitement to Genocide. *Harvard Human Rights Journal* vol. 22, iss. 2 (2009): p. 245.

Del Mar, K. Operative Provisions of the Genocide Convention. In *The UN Genocide Convention: A Commentary*. Edited by P. Gaeta. (Oxford [United Kingdom]: Oxford University Press, 2009). p. 494.

Doswald-Beck, L. International Crimes. In *Post-Conflict Peacebuilding: A Lexicon*. Edited by V. Chetail. (Oxford [United Kingdom]: Oxford University Press, 2009). p. 158.

Ferencz, D. M. Commentaries on the Genocide Convention: A Reintroduction to Nehemiah Robinson. *Case Western Reserve Journal of International Law* vol. 40, iss. 1–2 (2007): p. 311.

Fink, M. D., and R.J. Galvin. Combating Pirates Off the Coast of Somalia: Current Legal Challenges. *Netherlands International Law Review* vol. 56, iss. 3 (2009): p. 367.

Gaja, G. The Role of the United Nations in Preventing and Suppressing Genocide. In *The UN Genocide Convention: A Commentary.* Edited by P. Gaeta. (Oxford [United Kingdom]: Oxford University, 2009). p. 397.

Galbraith, J. The Pace of International Criminal Justice. *Michigan Journal of International Law* vol. 31, iss. 1 (2009): p. 79.

Jia, B.B. Multiculturalism and the Development of the System of International Criminal Law. In *Multiculturalism and International Law: Essays in Honour of Edward McWhinney.* Edited by S. Yee and J. Morin. (Leiden [The Netherlands]: Martinus Nijhoff, 2009). p. 629.

Kelly, M. J. Genocide: The Power of a Label. *Case Western Reserve Journal of International Law* vol. 40, iss. 1–2 (2007): p. 147.

Klinkner, M. Forensic Science Expertise for International Criminal Proceedings: An Old Problem, a New Context and a Pragmatic Resolution. *International Journal of Evidence and Proof* vol. 13, iss. 2 (2009): p. 102.

Kontorovich, E. *United States v. Shi*: Universal Jurisdiction—Piracy—International Criminal Law—UN Convention on the Law of the Sea—Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation. *American Journal of International Law* vol. 103, iss. 4 (2009): p. 734.

Ohlin, J. D. Incitement and Conspiracy to Commit Genocide. In *The UN Genocide Convention: A Commentary.* Edited by P. Gaeta. (Oxford [United Kingdom]: Oxford University, 2009). p. 207.

Olásolo, H. *The Criminal Responsibility of Senior Political and Military Leaders as Principals to International Crimes.* (Oxford [United Kingdom]: Hart, 2009). 396 p.

—. Developments in the Distinction between Principal and Accessorial Liability in Light of the First Case-Law of the International Criminal Court. In *The Emerging Practice of the International Criminal Court.* Edited by C. Stahn and G. Sluiter. (Leiden [The Netherlands]: Nijhoff, 2009). p. 339.

The Oxford Companion to International Criminal Justice Edited by A. Cassese. (New York [United States]: Oxford University Press, 2009). 1008 p.

Prows, P., and M. Ottolenghi. *Res Judicata* in the ICJ's *Genocide* Case: Implications for Other Courts and Tribunals? *Pace University School of Law International Law Review* vol. 21, iss. 1 (2009): p. 37.

Robinson, N. The Genocide Convention. *Case Western* vol. 40, iss. 1–2 (2007): p. i.

Sato, H. The Defense of Superior Orders in International Law: Some Implications for the Codification of International Criminal Law. *International Criminal Law Review* vol. 9, iss. 1 (2009): p. 117.

Schabas, W. A. Genocide Law in a Time of Transition: Recent Developments. In *International Human Rights Law in a Global Context*. Edited by I. Felipe Gómez and K. de Feyter. (Bilbao [Spain]: University of Deusto, 2009). p. 319.

—. International Crimes. In *Routledge Handbook of International Law*. Edited by D. Armstrong. (London [United Kingdom]: Routledge, 2009). p. 268.

—. Origins of the Genocide Convention: From Nuremberg to Paris. *Case Western Reserve Journal of International Law* vol. 40, iss. 1–2 (2007): p. 35.

Scharf, M. P., and B. M. Draffin. To Prevent and to Punish: An International Conference in Commemoration of the Sixtieth Anniversary of the Genocide Convention. *Case Western Reserve Journal of International Law* vol. 40, iss. 1–2 (2007): p. 1–10.

Scheffer, D. Introduction: Atrocity Crimes Litigation during 2008. *Northwestern Journal of International Human Rights* vol. 7, iss. 2 (2009): p. 161.

Sepinwall, A. J. Failures to Punish: Command Responsibility in Domestic and International Law. *Michigan Journal of International Law* vol. 30, iss. 2 (2008): p. 251.

Sivakumaran, S. Identifying an Armed Conflict Not of an International Character. In *The Emerging Practice of the International Criminal Court*. Edited by C. Stahn and G. Sluiter. (Leiden [The Netherlands]: Nijhoff, 2009). p. 363.

Trahan, J. Reflections on the Difficulties of Enforcing International Justice. *University of Pennsylvania Journal of International Economic Law* vol. 30, iss. 4 (2009): p. 1187.

The UN Genocide Convention: A Commentary. Edited by P. Gaeta. (Oxford [United Kingdom]: Oxford University Press, 2009).

Vöneky, S., *et al*. *Legitimation Ethischer Entscheidungen Im Recht Interdisziplinäre Untersuchungen*. (Berlin [Germany]: Springer, 2009). 351 p.

Wirth, S. Committing Liability in International Criminal Law. In *The Emerging Practice of the International Criminal Court*. Edited by C. Stahn and G. Sluiter. (Leiden [The Netherlands]: Nijhoff, 2009). p. 329.

Zou, K. Piracy and the Security Council. *International Journal of Marine and Coastal Law* vol. 24, iss. 3 (2009): p. 583-.

13. International economic law

Stoll, P. Le droit international économique face aux défis de la mondialisation. *Revue générale de droit international public* vol. 113, iss. 2 (2009): p. 273.

14. International terrorism

Acharya, U.D. The War on Terror and its Implications for International Law and Policy: War on Terror Or Terror Wars: The Problem in Defining Terrorism. *Denver Journal of International Law and Policy* vol. 37, iss. 4 (2009): p. 653–681.

Andrés-Sáenz-de-Santa-María, P. Collective International Measures to Counter International Terrorism. In *International Legal Dimension of Terrorism*. Edited by P.A. Fernández Sánchez. (Leiden [The Netherlands]: Martinus Nijhoff, 2009). p. 91.

Gurule, J. The Demise of the UN Economic Sanctions Regime to Deprive Terrorists of Funding. *Case Western Reserve Journal of International Law* vol. 41, iss. 1 (2009): p. 19–64.

Isanga, J. Counter-Terrorism and Human Rights: The Emergence of A Rule of Customary International Law from UN Resolutions. *Denver Journal of International Law and Policy* vol. 37, iss. 2 (2009): p. 233–256.

Kalala, T., and A. Mampuya Kanunk'a-Tshiabo. *Les résolutions de l'ONU et les destinataires non étatiques*. (Bruxelles [Belgium]: Larcier, 2009). 351 p.

Murase, S. Unilateral Responses to International Terrorism: Self-Defense Or Law Enforcement? In *Multiculturalism and International Law: Essays in Honour of Edward McWhinney*. Edited by S. Yee and J. Morin. (Leiden [The Netherlands]: Martinus Nijhoff, 2009). p. 429.

Tams, C. J. The use of Force Against Terrorists. *European Journal of International Law* vol. 20, iss. 2 (2009): p. 359.

15. International trade law

Alvarez, J. E. A BIT on Custom. *New York University Journal of International Law and Politics* vol. 42, iss. 1 (2009): p. 17.

Efrat, A. A Theory of Internationally Regulated Goods. *Fordham International Law Journal* vol. 32, iss. 5 (2008): p. 1466.

Forrest, C. The Hague Convention on Choice of Court Agreements: The Maritime Exceptions. *Journal of Private International Law* vol. 5, iss. 3 (2009): p. 491.

Ho, C. M. Patent Breaking Or Balancing: Separating Strands of Fact from Fiction Under TRIPS. *North Carolina Journal of International Law and Commercial Regulation* vol. 34, iss. 2 (2008): p. 371.

Karbowski, J. Grocery Store Activism: A WTO Compliant Means to Incentivize Social Responsibility. *Virginia Journal of International Law* vol. 49, iss. 3 (2009): p. 727.

Michaels, A. International Technology Transfer and TRIPS Article 66.2: Can Global Administrative Law Help Least-Developed Countries Get what they Bargained for? *Georgetown Journal of International Law* vol. 41, iss. 1 (2009): p. 223.

Muriu, D. W. Third World Resistance to International Economic and Structural Constraints: Assessing the Utility of the Right to Health in the Context of the TRIPS Agreement. *International Community Law Review* vol. 11, iss. 4 (2009): p. 409.

Poretti, P. *The Regulation of Subsides within the General Agreement on Trade in Services of the WTO: Problems and Prospects*. (Alphen Aan Den Rijn [The Netherlands]: Kluwer Law International, 2009). 344 p.

Strauss, D. M. The Application of TRIPS to GMOs: International Intellectual Property Rights and Biotechnology. *Stanford Journal of International Law* vol. 45, iss. 2 (2009): p. 287.

16. International tribunals

Ambos, K. Confidential Investigations (Article 54 (3)(E) ICC Statute) Vs. Disclosure Obligations: The Lubanga Case and National Law. *New Criminal Law Review* vol. 12, iss. 4 (2009): p. 543–568.

—. 'Witness Proofing' before the ICC: Neither Legally Admissible nor Necessary. In *The Emerging Practice of the International Criminal Court.* Edited by C. Stahn and G. Sluiter. (Leiden [The Netherlands]: Nijhoff, 2009). p. 599.

Anderson, D. The 'Disordered Medley' of International Tribunals and the Coherence of International Law. In *International Law and Power: Perspectives on Legal Order and Justice.* Edited by K.H. Kaikobad and M. Bohlander. (Leiden [The Netherlands]: Martinus Nijhoff Publishers, 2009). p. 389.

Apuuli, K.P. Procedural due Process and the Prosecution of Genocide Suspects in Rwanda. *Journal of Genocide Research* vol. 11, iss. 1 (2009): p. 11.

Bales, E. Torturing the Rome Statute: The Attempt to Bring Guantanamo's Detainees within the Jurisdiction of the International Criminal Court. *Tulsa Journal of Comparative and International Law* vol. 16, iss. 2 (2009): p. 173.

Bantekas, I. The Need to Amend Article 12 of the ICC Statute: Remedying the Effects of Multilateral Treaties upon Third Parties. *New Criminal Law Review* vol. 12, iss. 4 (2009): p. 485.

Bekou, O. A Case for Review of Article 88, ICC Statute: Strengthening a Forgotten Provision. *New Criminal Law Review* vol. 12, iss. 3 (2009): p. 468.

Bellinger III, J. B. International Courts and Tribunals and the Rule of Law. In *The Sword and the Scales: The United States and International Courts and Tribunals.* Edited by C. P. R. Romano. (New York [United States]: Cambridge, 2009). p. 460.

Bisset, A. Rethinking the Powers of Truth Commissions in Light of the ICC Statute. *Journal of International Criminal Justice* vol. 7, iss. 5 (2009): p. 963.

Bitti, G. Article 21 of the Statute of the International Criminal Court and the Treatment of Sources of Law in the Jurisprudence of the ICC. In *The Emerging Practice of the International Criminal Court.* Edited by C. Stahn and G. Sluiter. (Leiden [The Netherlands]: Nijhoff, 2009). p. 285.

Bohlander, M. Pride and Prejudice Or Sense and Sensibility? A Pragmatic Proposal for the Recruitment of Judges at the ICC and Other International Criminal Courts. *New Criminal Law Review* vol. 12, iss. 4 (2009): p. 529–542.

Boister, N. Treaty Crimes, International Criminal Court? *New Criminal Law Review* vol. 12, iss. 3 (2009): p. 341–365.

Burke-White, W. W., and S. Kaplan. Shaping the Contours of Domestic Justice: The International Criminal Court and an Admissibility Challenge in the Uganda Situation. In *The Emerging Practice of the International Criminal Court.* Edited by C. Stahn and G. Sluiter. (Leiden [The Netherlands]: Nijhoff, 2009). p. 79.

—. Shaping the Contours of Domestic Justice: The International Criminal Court and an Admissibility Challenge in the Uganda Situation. *Journal of International Criminal Justice* vol. 7, iss. 2 (2009): p. 257.

Buzzard, L. Holding an Arsonist's Feet to the Fire? The Legality and Enforceability of the ICC's Arrest Warrant for Sudanese President Omar Al-Bashir. *American University International Law Review* vol. 24, iss. 5 (2009): p. 897–941.

Canter, A. S. For these Reasons, the Chamber: Denies the Prosecutor's Request for Referral: The False Hope of Rule 11 *BIS*. *Fordham International Law Journal* vol. 32, iss. 5 (2009): p. 1614–1656.

Cassese, A. The International Criminal Court Five Years on: *Andante* or *Moderato*? In *The Emerging Practice of the International Criminal Court.* Edited by C. Stahn and G. Sluiter. (Leiden [The Netherlands]: Nijhoff, 2009). p. 21.

Cerruti, E. Self-Representation in the International Arena: Removing a False Right of Spectacle. *Georgetown Journal of International Law* vol. 40, iss. 3 (2009): p. 919–1069.

Charnovitz, S. The Enforcement of WTO Judgments. *The Yale Journal of International Law* vol. 34, iss. 2 (2009): p. 558.

Cho, S. Of the World Trade Court's Burden. *European Journal of International Law* vol. 20, iss. 3 (2009): p. 675.

Clark, J.N. International War Crimes Tribunals and the Challenge of Outreach. *International Criminal Law Review* vol. 9, iss. 1 (2009): p. 99–116.

—. The Limits of Retributive Justice: Findings of an Empirical Study in Bosnia and Hercegovina *[sic]. Journal of International Criminal Justice* vol. 7, iss. 3 (2009): p. 463.

—. Plea Bargaining at the ICTY: Guilty Pleas and Reconciliation. *European Journal of International Law* vol. 20, iss. 2 (2009): p. 415.

Clark, R. S. Building on Article 8 (2)(b)(Xx) of the Rome Statute of the International Criminal Court: Weapons and Methods of Warfare. *New Criminal Law Review* vol. 12, iss. 3 (2009): p. 366.

—. Ambiguities in Articles 5(2), 121 and 123 of the Rome Statute. *Case Western Reserve Journal of International Law* vol. 41, iss. 2–3 (2009): p. 413.

Cogliati-Bantz, V. International Tribunal for the Law of the Sea, *Hoshinmaru* (Japan v. Russian Federation) and *Tomimaru* (Japan v. Russian Federation), Prompt Release Judgments. *International and Comparative Law Quarterly* vol. 58, iss. 1 (2009): p. 241.

Cohen, M. Victims' Participation Rights within the International Criminal Court: A Critical Overview. *Denver Journal of International Law and Policy* vol. 37, iss. 3 (2009): p. 351.

Cryer, R. The Definitions of International Crimes in the *Al Bashir* Arrest Warrant Decision. *Journal of International Criminal Justice* vol. 7, iss. 2 (2009): p. 283.

—. The International Criminal Court and its Relationship to Non-Party States. In *The Emerging Practice of the International Criminal Court.* Edited by C. Stahn and G. Sluiter. (Leiden [The Netherlands]: Nijhoff, 2009). p. 115.

—. Royalism and the K ng: Article 21 of the Rome Statute and the Politics of Sources. *New Criminal Law Review* vol. 12, iss. 3 (2009): p. 390–405.

De Smet, S. A Structural Analysis of the Role of the Pre-Trial Chamber in the Fact-Finding Process of the ICC. In *The Emerging Practice of the International Criminal Court.* Edited by C. Stahn and G. Sluiter. (Leiden [The Netherlands]: Nijhoff, 2009). p. 405.

DeGuzman, M. M. Gravity and the Legitimacy of the International Criminal Court. *Fordham International Law Journal* vol. 32, iss. 5 (2008): p. 1400.

Deitelhoff, N. The Discursive Process of Legalization: Charting Islands of Persuasion in the ICC Case. *International Organization* vol. 63, iss. 1 (2009): p. 33.

Doherty, T. Developments in the Prosecution of Gender-Based Crimes—the Special Court for Sierra Leone Experience. *American University Journal of Gender, Social Policy, and the Law* vol. 17, iss. 2 (2009): p. 327.

Dubuisson, M., A. Bertrand, and N. Schauder. Contribution of the Registry to Greater Respect for the Principles of Fairness and Expeditious Proceedings before the International Criminal Court. In *The Emerging Practice of the International Criminal Court.* Edited by C. Stahn and G. Sluiter. (Leiden [The Netherlands]: Nijhoff, 2009). p. 565.

Eckelmans, F. C. The First Jurisprudence of the Appeals Chamber of the ICC. In *The Emerging Practice of the International Criminal Court.* Edited by C. Stahn and G. Sluiter. (Leiden [The Netherlands]: Nijhoff, 2009). p. 527.

El Zeidy, M. M. The Legitimacy of Withdrawing State Party Referrals and *Ad Hoc* Declarations Under the Statute of the International Criminal Court. In *The Emerging Practice of the International Criminal Court.* Edited by C. Stahn and G. Sluiter. (Leiden [The Netherlands]: Nijhoff, 2009). p. 55.

Elewa Badar, M. *Dolus Eventualis* and the Rome Statute without it? *New Criminal Law Review* vol. 12, iss. 3 (2009): p. 433–467.

Eltringham, N. We are Not a Truth Commission: Fragmented Narratives and the Historical Record at the International Criminal Tribunal for Rwanda. *Journal of Genocide Research* vol. 11, iss. 1 (2009): p. 55–79.

The Emerging Practice of the International Criminal Court. Edited by C. Stahn, and G. Sluiter. (Leiden [The Netherlands]: Nijhoff, 2009). 772 p.

Finlay, L. Does the International Criminal Court Protect Against Double Jeopardy: An Analysis of Article 20 of the Rome Statute. *Journal of International Law and Policy* vol. 15, iss. 2 (2009): p. 221–248.

Friman, H. Interlocutory Appeals in the Early Practice of the International Criminal Court. In *The Emerging Practice of the International Criminal Court.* Edited by C. Stahn and G. Sluiter. (Leiden [The Netherlands]: Nijhoff, 2009). p. 553.

—. The International Criminal Court and Participation of Victims: A Third Party to the Proceedings? *Leiden Journal of International Law* vol. 22, iss. 3 (2009): p. 485.

Gaeta, P. Does President Al Bashir Enjoy Immunity from Arrest? *Journal of International Criminal Justice* vol. 7, iss. 2 (2009): p. 315.

Gallmtetzer, R. The Trial Chamber's Discretionary Power to Devise the Proceedings before it and its Exercise in the Trial of *Thomas Lubanga Dyilo*. In *The Emerging Practice of the International Criminal Court*. Edited by C. Stahn and G. Sluiter. (Leiden [The Netherlands]: Nijhoff, 2009). p. 501.

Gibson, K. An Uneasy Co-Existence: The Relationship between Internationalised Criminal Courts and their Domestic Counterparts. *International Criminal Law Review* vol. 9, iss. 2 (2009): p. 275.

Gillett, M., and M. Schuster. The Special Tribunal for Lebanon Swiftly Adopts its Rules of Procedure and Evidence. *Journal of International Criminal Justice* vol. 7, iss. 5 (2009): p. 885.

Guariglia, F. The Selection of Cases by the Office of the Prosecutor of the International Criminal Court. In *The Emerging Practice of the International Criminal Court*. Edited by C. Stahn and G. Sluiter. (Leiden [The Netherlands]: Nijhoff, 2009). p. 209.

Guzman, A. T., and T.L. Meyer. International Common Law: The Soft Law of International Tribunals. *Chicago Journal of International Law* vol. 9, iss. 2 (2008): p. 515.

Hall, C. K. Developing and Implementing an Effective Positive Complementarity Prosecution Strategy. In *The Emerging Practice of the International Criminal Court*. Edited by C. Stahn and G. Sluiter. (Leiden [The Netherlands]: Nijhoff, 2009). p. 219.

Hamamoto, S. La procédure de prompte mainlevée préjuge-t-elle le fond de la procédure interne de l'état côtier? L'évolution de la jurisprudence du Tribunal International du Droit de la Mer sure la prompte mainlevée. *Revue générale de droit international public* vol. 113, iss. 4 (2009): p. 851.

Heinsch, R. How to Achieve Fair and Expeditious Trial Proceedings before the ICC: Is it Time for a More Judge-Dominated Approach? In *The Emerging Practice of the International Criminal Court*. Edited by C. Stahn and G. Sluiter. (Leiden [The Netherlands]: Nijhoff, 2009). p. 479.

Higgins, G. The Impact of the Size, Scope, and Scale of the Milošević Trial and the Development of Rule 73 *Bis* before the ICTY. *Northwestern University Journal of International Human Rights* vol. 7, iss. 2 (2009): p. 239.

Holá, B., A. Smeulers, and C. Bijleveld. Is ICTY Sentencing Predictable? An Empirical Analysis of ICTY Sentencing Practice. *Leiden Journal of International Law* vol. 22, iss. 1 (2009): p. 79–97.

Jackson, J. Finding the Best Epistemic Fit for International Criminal Tribunals: Beyond the Adversarial-Inquisitorial Dichotomy. *Journal of International Criminal Justice* vol. 7, iss. 1 (2009): p. 17.

Jalloh, C. C. Regionalizing International Criminal Law? *International Criminal Law Review* vol. 9, iss. 3 (2009): p. 445–499.

Jenks, C. Notice Otherwise Given: Will *in Absentia* Trials at the Special Tribunal for Lebanon Violate Human Rights? *Fordham International Law Journal* vol. 33, iss. 1 (2009): p. 57–100.

Jones, R. K. Untangling the Right to Self-Representation in the International Criminal Tribunal for the Former Yugoslavia. *Georgia Law Review* vol. 43, iss. 4 (2009): p. 1285–1319.

Jordash, W. The Practice of 'Witness Proofing' in International Criminal Tribunals: Why the International Criminal Court should Prohibit the Practice. *Leiden Journal of International Law* vol. 22, iss. 3 (2009): p. 501.

Kamardi, C. *Die Ausformung einer Prozessordnung sui generis durch das ICTY unter berücksichtigung des Fair-Trial-Prinzips*. (Berlin [Germany]: Springer, 2008). 424 p.

Karsten, N. Distinguishing Military and Non-Military Superiors: Reflections on the *Bemba* Case at the ICC. *Journal of International Criminal Justice* vol. 7, iss. 5 (2009): p. 983–1004.

Kaul, J. H. The International Criminal Court—its Relationship to Domestic Jurisdictions. In *The Emerging Practice of the International Criminal Court*. Edited by C. Stahn and G. Sluiter. (Leiden [The Netherlands]: Nijhoff, 2009). p. 31.

Kelsall, T. *Culture Under Cross-Examination: International Justice and the Special Court for Sierra Leone*. (Cambridge [United Kingdom]: Cambridge University Press, 2009). 298 p.

Kirsch, P. The International Criminal Court: Building on the Principal Legal Systems of the World. In *Multiculturalism and International Law: Essays in Honour of Edward McWhinney*. Edited by S. Yee and J. Morin. (Leiden [The Netherlands]: Martinus Nijhoff, 2009). p. 315.

Kirsch, S. Two Kinds of Wrong: On the Context Element of Crimes Against Humanity. *Leiden Journal of International Law* vol. 22, iss. 3 (2009): p. 525–541.

Klarin, M. The Impact of the ICTY Trials on Public Opinion in the Former Yugoslavia. *Journal of International Criminal Justice* vol. 7, iss. 1 (2009): p. 89.

Kleffner, J. K. Auto-Referrals and the Complementary Nature of the ICC. In *The Emerging Practice of the International Criminal Court*. Edited by C. Stahn and G. Sluiter. (Leiden [The Netherlands]: Nijhoff, 2009). p. 41.

Knoops, G.A. The Duality of the Proportionality Principle within Asymmetric Warfare and Ensuing Superior Criminal Responsibilities. *International Criminal Law Review* vol. 9, iss. 3 (2009): p. 501–529.

Korecki, L. Procedural Tools for Ensuring Cooperation of States with the Special Tribunal for Lebanon. *Journal of International Criminal Justice* vol. 7, iss. 5 (2009): p. 927–944.

Kreß, C. The Crime of Genocide and Contextual Elements: A Comment on the ICC Pre-Trial Chamber's Decision in the *Al Bashir* Case. *Journal of International Criminal Justice* vol. 7, iss. 2 (2009): p. 297.

Kurth, M. E. Anonymous Witnesses before the International Criminal Court: Due Process in Dire Straits. In *The Emerging Practice of the International Criminal Court*. Edited by C. Stahn and G. Sluiter. (Leiden [The Netherlands]: Nijhoff, 2009). p. 615.

Kuschnik, B. International Criminal due Process in the Making: New Tendencies in the Law of Non-Disclosure in the Proceedings before the ICC. *International Criminal Law Review* vol. 9, iss. 1 (2009): p. 157–185.

Kyriakakis, J. Corporate Criminal Liability and the ICC Statute. *Netherlands International Law Review* vol. 56, iss. 3 (2009): p. 333–366.

Le Floch, G. *L'urgence devant les juridictions internationales*. (Paris [France]: Pédone, 2008). 517 p.

Libby, S. (D)Effective Control: Problems Arising from the Application of Non-Military Command Responsibility by the International Criminal Tribunal for Rwanda. *Emory International Law Review* vol. 23, iss. 1 (2009): p. 201–229.

Linton, S., and F. K. Tiba. The International Judge in an Age of Multiple International Courts and Tribunals. *Chicago Journal of International Law* vol. 9, iss. 2 (2008): p. 407–470.

Luping, D. Investigation and Prosecution of Sexual and Gender-Based Crimes before the International Criminal Court. *American University Journal of Gender, Social Policy, and the Law* vol. 17, iss. 2 (2009): p. 431–496.

Magliveras, K. Some Thoughts on a Possible Involvement of the ICC Prosecutor in the Recent Armed Conflict in the Gaza Strip. *Revue Hellénique de droit international* (2008): p. 435.

Majinge, C. The International Criminal Court and the Question of Alternative Justice System in Africa: A Case of be Careful of what You Wish for? *Verfassung und Recht in Ubersee* vol. 42, iss. 2 (2009): p. 151–172.

Malekian, F. The Homogeneity of International Criminal Court with Islamic Jurisprudence. *International Criminal Law Review* vol. 9, iss. 4 (2009): p. 595–621.

Manalich Raffo, J. P. Aporías del derecho penal internacional en el espejo del estatuto de Roma. *Revista Juridica de la Universidad de Puerto Rico* vol. 78, iss. 3 (2009): p. 767-779.

Massidda, P., and S. Pellet. Role and Practice of the Office of Public Counsel for Victims. In *The Emerging Practice of the International Criminal Court*. Edited by C. Stahn and G. Sluiter. (Leiden [The Netherlands]: Nijhoff, 2009). p. 691.

McGonigle, B.M. Two for the Price of One: Attempts by the Extraordinary Chambers in the Courts of Cambodia to Combine Retributive and Restorative Justice Principles. *Leiden Journal of International Law* vol. 22, iss. 1 (2009): p. 127–149.

Meernik, J., and R. Aloisi. I do Declare: Politics, Declarations and the International Criminal Court. *International Criminal Law Review* vol. 9, iss. 2 (2009): p. 253–273.

Melandri, M. The Relationship between State Sovereignty and the Enforcement of International Criminal Law Under the Rome Statute (1998): A Complex Interplay. *International Criminal Law Review* vol. 9, iss. 3 (2009): p. 531–545.

Mettraux, G. The Internationalization of Domestic Jurisdictions by International Tribunals: The Special Tribunal for Lebanon Renders its First Decisions. *Journal of International Criminal Justice* vol. 7, iss. 5 (2009): p. 911–926.

Mohan, M. The Paradox of Victim-Centrism: Victim Participation at the Khmer Rouge Tribunal. *International Criminal Law Review* vol. 9, iss. 5 (2009): p. 733–775.

Moreno Ocampo, L. Building a Future on Peace and Justice: The International Criminal Court. In *Building a Future on Peace and Justice: Studies on Transitional Justice, Conflict Resolution and Development.* Edited by K. Ambos, J. Large, and M. Wierda. (Berlin [Germany]: Springer, 2009). p. 9–13.

—. The International Criminal Court in Motion. In *The Emerging Practice of the International Criminal Court.* Edited by C. Stahn and G. Sluiter. (Leiden [The Netherlands]: Nijhoff, 2009). p. 13.

Nerlich, V. The Status of ICTY and ICTR Precedent in Proceedings before the ICC. In *The Emerging Practice of the International Criminal Court.* Edited by C. Stahn and G. Sluiter. (Leiden [The Netherlands]: Martinus Nijhoff, 2009). p. 305.

Ntoubandi, F. Towards Ending Impunity in Darfur: The ICC Arrest Warrant of 27 April 2007. *Heidelberg Journal of International Law* vol. 69, iss. 1 (2009): p. 123.

Ohlin, J. D. Joint Criminal Confusion. *New Criminal Law Review* vol. 12, iss. 3 (2009): p. 406–419.

—. Peace, Security, and Prosecutorial Discretion. In *The Emerging Practice of the International Criminal Court.* Edited by C. Stahn and G. Sluiter. (Leiden [The Netherlands]: Nijhoff, 2009). p. 185.

Olásolo, H. Systematic and Casuistic Approaches to the Role of Victims in Criminal Proceedings before the International Criminal Court. *New Criminal Law Review* vol. 12, iss. 4 (2009): p. 513–528.

Pauwelyn, J., and L. E. Salles. Forum Shopping before International Tribunals: (Real) Concerns, (Im)Possible Solutions. *Cornell International Law Journal* vol. 42, iss. 1 (2009): p. 77–118.

Quirico, O. La théorie de la négligence criminelle et le Statut de la Cour pénale internationale. *Revue générale de droit international public* vol. 113, iss. 2 (2009): p. 333.

Rastan, R. The Responsibility to Enforce—Connecting Justice with Unity. In *The Emerging Practice of the International Criminal Court.* Edited by C. Stahn and G. Sluiter. (Leiden [The Netherlands]: Nijhoff, 2009). p. 163.

—. Review of ICC Jurisprudence 2008. *Northwestern University Journal of International Human Rights* vol. 7, iss. 2 (2009): p. 261.

Roach, S. C. *Governance, Order, and the International Criminal Court: Between Realpolitik and a Cosmopolitan Court.* (Oxford [United Kingdom]: Oxford University Press, 2009). 275 p.

Roberts, K. The Contribution of the ICTY to the Grave Breaches Regime. *Journal of International Criminal Justice* vol. 7, iss. 4 (2009): p. 743.

Rodman, K.A. Is Peace in the Interests of Justice? The Case for Broad Prosecutorial Discretion at the International Criminal Court. *Leiden Journal of International Law* vol. 22, iss. 1 (2009): p. 99.

Ryngaert, C. The International Criminal Court and Universal Jurisdiction: A Fraught Relationship? *New Criminal Law Review* vol. 12, iss. 4 (2009): p. 498.

SaCouto, S., and K. Cleary. The Importance of Effective Investigation of Sexual Violence and Gender-Based Crimes at the International Criminal Court. *American University Journal of Gender, Social Policy, and the Law* vol. 17, iss. 2 (2009): p. 337.

Schabas, W.A. Prosecutorial Discretion and Gravity. In *The Emerging Practice of the International Criminal Court*. Edited by C. Stahn and G. Sluiter. (Leiden [The Netherlands]: Nijhoff, 2009). p. 229.

Scheffer, D. A Review of the Experiences of the Pre-Trial and Appeals Chambers of the International Criminal Court regarding the Disclosure of Evidence. In *The Emerging Practice of the International Criminal Court*. Edited by C. Stahn and G. Sluiter. (Leiden [The Netherlands]: Nijhoff, 2009). p. 585.

Shelton, D. Form, Function, and the Powers of International Courts. *Chicago Journal of International Law* vol. 9, iss. 2 (2009): p. 537.

Simmons, B., and A. Danner. The International Criminal Court. In *Routledge Handbook of International Law*. Edited by D. Armstrong. (London [United Kingdom]: Routledge, 2009). p. 239.

Singh, H. Critique of the Mrkšić Trial Chamber (ICTY) Judgment: A Re-Evaluation of Whether Soldiers *Hors De Combat* are Entitled to Recognition as Victims of Crimes Against Humanity. *The Law and Practice of International Courts and Tribunals* vol. 8, iss. 2 (2009): p. 247.

Sluiter, G. Human Rights Protection in the ICC Pre-Trial Phase. In *The Emerging Practice of the International Criminal Court*. Edited by C. Stahn and G. Sluiter. (Leiden [The Netherlands]: Nijhoff, 2009). p. 459.

—. 'I Beg You, Please Come Testify': The Problematic Absence of Subpoena Powers at the ICC. *New Criminal Law Review* vol. 12, iss. 4 (2009): p. 590.

Souaré, I.K. The Legal-Political Dilemma of the International Criminal Court's Involvement in Sudan. *Studia Diplomatica The Brussels Journal of International Relations* vol. LXII, iss. 2 (2009): p. 99.

Ssenyonjo, M. The International Criminal Court and the Warrant of Arrest for Sudan's President Al-Bashir: A Crucial Step Towards Challenging Impunity or a Political Decision? *Nordic Journal of International Law* vol. 78, iss. 3 (2009): p. 397.

Stahn, C. Judicial Review of Prosecutorial Discretion: Five Years on. In *The Emerging Practice of the International Criminal Court*. Edited by C. Stahn and G. Sluiter. (Leiden [The Netherlands]: Nijhoff, 2009). p. 247.

Stegmiller, I. The Gravity Threshold Under the ICC Statute: Gravity Back and Forth in Lubanga and Ntaganda. *International Criminal Law Review* vol. 9, iss. 3 (2009): p. 547.

The Sword and the Scales: The United States and International Courts and Tribunals. Edited by C.P.R. Romano. (New York [United States]: Cambridge, 2009). 460 p.

Tabak, S. Article 124, War Crimes, and the Development of the Rome Statute. *Georgetown Journal of International Law* vol. 40, iss. 3 (2009): p. 1069.

Taylor III, B. D. Demystifying the Procedural Framework of the International Criminal Court: A Modest Proposal for Radical Revision. In *The Emerging Practice of the International Criminal Court.* Edited by C. Stahn and G. Sluiter. (Leiden [The Netherlands]: Nijhoff, 2009). p. 755.

Thynne, K. The International Criminal Court: A Failure of International Justice for Victims? *Alberta Law Review* vol. 46, iss. 4 (2009): p. 957.

Tolbert, D., and A. Kontic. The International Criminal Tribunal for the Former Yugoslavia: Transitional Justice, the Transfer of Cases to National Courts, and Lessons for the ICC. In *The Emerging Practice of the International Criminal Court.* Edited by C. Stahn and G. Sluiter. (Leiden [The Netherlands]: Nijhoff, 2009). p. 135.

Totten, C.D. The International Criminal Court and Truth Commissions: A Framework for Cross-Interaction in the Sudan and Beyond. *Northwestern University Journal of International Human Rights* vol. 7, iss. 1 (2009): p. 1.

Trendafilova, E. Fairness and Expeditiousness in the International Criminal Court's Pre-Trial Proceedings. In *The Emerging Practice of the International Criminal Court.* Edited by C. Stahn and G. Sluiter. (Leiden [The Netherlands]: Nijhoff, 2009). p. 441.

Triffterer, O. Can the 'Elements of Crimes' Narrow Or Broaden Responsibility for Criminal Behaviour Defined in the Rome Statute? In *The Emerging Practice of the International Criminal Court.* Edited by C. Stahn and G. Sluiter. (Leiden [The Netherlands]: Nijhoff, 2009). p. 381.

Van Der Wilt, Harmen G. The Continuous Quest for Proper Modes of Criminal Responsibility. *Journal of International Criminal Justice* vol. 7, iss. 2 (2009): p. 307.

Van Schaack, B. Obstacles on the Road to Gender Justice: The International Criminal Tribunal for Rwanda as Object Lesson. *American University Journal of Gender, Social Policy, and the Law* vol. 17, iss. 2 (2009): p. 361.

van Sliedregt, E. Article 28 of the ICC Statute: Mode of Liability and/or Separate Offense? *New Criminal Law Review* vol. 12, iss. 3 (2009): p. 420.

Van Sliedregt, E. System Criminality at the ICTY. In *System Criminality in International Law.* Edited by A. Nollkaemper and H. van der Wil. (Cambridge [United Kingdom]: Cambridge Universitey, 2009). p. 183.

Vasiliev, S. Article 68 (3) and Personal Interests of Victims in the Emerging Practice of the ICC. In *The Emerging Practice of the International Criminal Court.* Edited by C. Stahn and G. Sluiter. (Leiden [The Netherlands]: Martinus Nijhoff, 2009). p. 635.

—. Proofing the Ban on 'Witness Proofing': Did the ICC Get it Right? *Criminal Law Forum* vol. 20, iss. 2–3 (2009): p. 193.

Visser, G. The Future for Collected Prosecutorial Evidence at the International Criminal Tribunal for Rwanda. *Cardozo Public Law, Policy and Ethics Journal* vol. 7, iss. 3 (2009): p. 633.

Whiting, A. In International Criminal Prosecutions, Justice Delayed can be Justice Delivered. *Harvard International Law Journal* vol. 50, iss. 2 (2009): p. 323.

Williams, S., and L. Sherif. The Arrest Warrant for President Al-Bashir: Immunities of Incumbent Heads of State and the International Criminal Court. *Journal of Conflict and Security Law* vol. 14, iss. 1 (2009): p. 71.

Williams, S. Internationalized Tribunals: A Search for their Legal Bases. In *International Law and Power: Perspectives on Legal Order and Justice*. Edited by K.H. Kaikobad and M. Bohlander. (Leiden [The Netherlands]: Martinus Nijhoff, 2009). p. 455.

Williams, S. *Hybrid and Internationalised Criminal Tribunals*. (Oxford [United Kingdom]: Hart, 2009). 288 p.

Wladimiroff, M. Defending Individuals Accused of Genocide. *Case Western Reserve Journal of International Law* vol. 40, iss. 1–2 (2007): p. 271.

Zahar, A. International Court and Private Citizen. *New Criminal Law Review* vol. 12, iss. 4 (2009): p. 569.

17. International waterways

Boisson de Chazournes, L. Comment: Trends in the Law Applicable to Freshwaters. In *Peace through International Law: The Role of the International Law Commission. A Colloquium at the Occasion of its Sixtieth Anniversary*. Edited by G. Nolte. (Dordrecht [The Netherlands]: Springer, 2009). p. 157.

18. Intervention and humanitarian intervention

Autesserre, S. Hobbes and the Congo: Frames, Local Violence, and International Intervention. *International Organization* vol. 63, iss. 2 (2009): p. 249.

Gegout, C. The West, Realism and Intervention in the Democratic Republic of Congo (1996–2006). *International Peacekeeping* vol. 16, iss. 2 (2009): p. 231.

Jamnejad, M., and M. Wood. The Principle of Non-Intervention. *Leiden Journal of International Law* vol. 22, iss. 2 (2009): p. 345.

Leclerc-Gagne, E., and M. Byers. A Question of Intent: The Crime of Aggression and Unilateral Humanitarian Intervention. *Case Western Reserve Journal of International Law* vol. 41, iss. 2–3 (2009): p. 379.

Mendez, J. E. Remarks on Intervention. *Case Western Reserve Journal of International Law* vol. 40, iss. 1–2 (2007): p. 87.

Murphy, S. D. Criminalizing Humanitarian Intervention. *Case Western Reserve Journal of International Law* vol. 41, iss. 2–3 (2009): p. 341.

Saul, M. From Haiti to Somalia: The Assistance Model and the Paradox of State Reconstruction in International Law. *International Community Law Review* vol. 11, iss. 1 (2009): p. 119.

Strauss, E. *The Emperor's New Clothes? the United Nations and the Implementation of the Responsibility to Protect*. (Baden-Baden [Germany]: Nomos, 2009). 144 p.

Williams, P.R., and M.E. Stewart. Humanitarian Intervention: The New Missing Link in the Fight to Prevent Crimes Against Humanity and Genocide. *Case Western Reserve Journal of International Law* vol. 40, iss. 1–2 (2007): p. 97.

19. Jurisdiction

Arevalo, L.B. Multiplication of International Jurisdictions and the Integrity of International Law. *ISLA Journal of International and Comparative Law* vol. 15, iss. 1 (2009): p. 49.

Colangelo, A.J. Universal Jurisdiction as an International 'False Conflict' of Laws. *Michigan Journal of International Law* vol. 30, iss. 3 (2009): p. 881.

Kolb, R., and S. Krähenmann. The Scope *Ratione Personae* of the Compulsory Jurisdiction of the ICJ. In *The UN Genocide Convention: A Commentary*. Edited by P. Gaeta. (Oxford [United Kingdom]: Oxford University, 2009). p. 425.

Kolb, R. The Compromissory Clause of the Convention. In *The UN Genocide Convention: A Commentary*. Edited by P. Gaeta. (Oxford [United Kingdom]: Oxford University Press, 2009). p. 407.

Orford, A. Jurisdiction without Territory: From the Holy Roman Empire to the Responsibility to Protect. *Michigan Journal of International Law* vol. 30, iss. 3 (2009): p. 981.

Shany, Y. *Regulating Jurisdictional Relations between National and International Courts*. 2nd ed. (Oxford [United Kingdom]: Oxford University, 2009). 216 p.

Zappalà, S. International Criminal Jurisdiction Over Genocide. In *The UN Genocide Convention: A Commentary*. Edited by P. Gaeta. (Oxford [United Kingdom]: Oxford University, 2009). p. 259.

20. Law of armed conflict

Engdahl, O. Compliance with International Humanitarian Law in Multinational Peace Operations. *Nordic Journal of International Law* vol. 78, iss. 4 (2009): p. 513.

Govern, K. H., and E. C. Bales. Taking Shots at Private Military Firms: International Law Misses its Mark (again). *Fordham International Law Journal* vol. 32, iss. 1 (2008): p. 55.

Haskell, J. D. The Complicity and Limits of International Law in Armed Conflict Rape. *Boston College Third World Law Journal* vol. 29, iss. 1 (2009): p. 35.

Jackson, D. Restoring the Law to the Battlefield: The Morality and Ethics of the Global War on Terror. *South Texas Law Review* vol. 50, iss. 4 (2009): p. 825.

Sivakumaran, S. Identifying an Armed Conflict Not of an International Character. In *The Emerging Practice of the International Criminal Court.* Edited by C. Stahn and G. Sluiter. (Leiden [The Netherlands]: Nijhoff, 2009). p. 363.

Peterson, I. The Natural Environment in Times of Armed Conflict: A Concern for International War Crimes Law? *Leiden Journal of International Law* vol. 22, iss. 2 (2009): p. 325.

Yihdego, Z. Darfur and Humanitarian Law: The Protection of Civilians and Civilian Objects. *Journal of Conflict and Security Law* vol. 14, iss. 1 (2009): p. 37.

21. Law of the sea

Allen, C. H. Revisiting the Thames Formula: The Evolving Role of the International Maritime Organization and its Member States in Implementing the 1982 Law of the Sea Convention. *San Diego International Law Journal* vol. 10, iss. 2 (2009): p. 265.

Armas-Pfirter, F. How can Life in the Deep Sea be Protected? *International Journal of Marine and Coastal Law* vol. 24, iss. 2 (2009): p. 281.

Bank, H. Port State Jurisdiction and Article 218 of the UN Convention on the Law of the Sea. *Journal of Maritime Law and Commerce* vol. 40, iss. 2 (2009): p. 291.

Baughen, S. International Maritime Law. *International Maritime and Commercial Law Yearbook 2009* (2009): p. 103.

Becker, M.A. International Law of the Sea. *International Lawyer* vol. 43, iss. 2 (2009): p. 915.

Blanco-Bazán, A. Specific Regulations for Shipping and Environmental Protection in the Arctic: The Work of the International Maritime Organization. *International Journal of Marine and Coastal Law* vol. 24, iss. 2 (2009): p. 381.

Byers, M., and S. Lalonde. Who Controls the Northwest Passage? *Vanderbilt Journal of Transnational Law* vol. 42, iss. 4 (2009): p. 1133.

Carpenter, B. Warm is the New Cold: Global Warming, Oil, UNCLOS Article 76, and how an Arctic Treaty might Stop a New Cold War. *Environmental Law* vol. 39, iss. 1 (2009): p. 215.

Cavnar, A. Accountability and the Commission on the Limits of the Continental Shelf: Deciding Who Owns the Ocean Floor. *Cornell International Law Journal* vol. 42, iss. 3 (2009): p. 387.

Churchill, R. Dispute Settlement under the UN Convention on the Law of the Sea: Survey for 2008. *International Journal of Marine and Coastal Law* vol. 24, iss. 4 (2009): p. 603.

Cogliati-Bantz, V. International Tribunal for the Law of the Sea, *Hoshinmaru* (Japan v. Russian Federation) and *Tomimaru* (Japan v. Russian Federation), Prompt Release Judgments. *International and Comparative Law Quarterly* vol. 58, iss. 1 (2009): p. 241.

Collins, R., and D. Hassan. Applications and Shortcomings of the Law of the Sea in Combating Piracy: A South East Asian Perspective. *Journal of Maritime Law and Commerce* vol. 40, iss. 1 (2009): p. 89.

Corell, H. The Arctic: An Opportunity to Cooperate and Demonstrate Statesmanship. *Vanderbilt Journal of Transnational Law* vol. 42, iss. 4 (2009): p. 1065.

Current Legal Developments: Intergovernmental Oceanographic Commission of the United Nations Educational, Scientific and Cultural Organization. *The International Journal of Marine and Coastal Law* vol. 24 (2009): p. 173.

Current Legal Developments: International Seabed Authority. *The International Journal of Marine and Coastal Law* vol. 24 (2009): p. 185.

de La Fayette, L. A. A New Regime for the Conservation and Sustainable use of Marine Biodiversity and Genetic Resources Beyond the Limits of National Jurisdiction. *International Journal of Marine and Coastal Law* vol. 24, iss. 2 (2009): p. 221.

Egede, E. African States and Participation in Deep Seabed Mining: Problems and Prospects. *International Journal of Marine and Coastal Law* vol. 24, iss. 4 (2009): p. 683.

Elferink, A. G. O. The Establishment of Outer Limits of the Continental Shelf Beyond 200 Nautical Miles by the Coastal State: The Possibilities of Other States to have an Impact on the Process. *International Journal of Marine and Coastal Law* vol. 24, iss. 3 (2009): p. 535.

Fitzgerald, M. A. Seizing Weapons of Mass Destruction from Foreign-Flagged Ships on the High Seas Under Article 51 of the UN Charter. *Virginia Journal of International Law* vol. 49, iss. 2 (2009): p. 473.

Golitsyn, V. Continental Shelf Claims in the Arctic Ocean: A Commentary. *International Journal of Marine and Coastal Law* vol. 24, iss. 2 (2009): p. 401.

Hamamoto, S. La procédure de prompte mainlevée préjuge-t-elle le fond de la procédure interne de l'état côtier? L'évolution de la jurisprudence du Tribunal International du Droit de la Mer sure la prompte mainlevée. *Revue générale de droit international public* vol. 113, iss. 4 (2009): p. 851.

Hoel, A. H. Do we Need a New Legal Regime for the Arctic Ocean? *International Journal of Marine and Coastal Law* vol. 24, iss. 2 (2009): p. 443.

Holmes, S. Breaking the Ice: Emerging Legal Issues in Arctic Sovereignty. *Chicago Journal of International Law* vol. 9, iss. 1 (2008): p. 323.

Jares, V. The Continental Shelf Beyond 200 Nautical Miles: The Work of the Commission on the Limits of the Continental Shelf and the Arctic. *Vanderbilt Journal of Transnational Law* vol. 42, iss. 4 (2009): p. 1265.

Karagiannis, S. À propos de quelques incertitudes concernant la demande de prompte mainlevée de l'immobilisation d'un navire devant le tribunal international du droit de la mer. *Journal du droit international*, iss. 3 (2009): p. 809.

Kontorovich, E. *United States v. Shi*: Universal Jurisdiction—Piracy—International Criminal Law—UN Convention on the Law of the Sea—Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation. *American Journal of International Law* vol. 103, iss. 4 (2009): p. 734.

Kraska, J. International Security and International Law in the Northwest Passage. *Vanderbilt Journal of Transnational Law* vol. 42, iss. 4 (2009): p. 1109.

Liu, C. *Maritime Transport Services in the Law of the Sea and the World Trade Organization*. (Bern [Germany]: Peter Lang, 2009). 314 p.

Lowe, V., and S. Talmon. *The Legal Order of the Oceans: Basic Documents on Law of the Sea*. (Oxford [United Kingdom]: Hart, 2009). 1150 p.

Maritime Boundary Disputes, Settlement Processes, and the Law of the Sea. Edited by S. Hong, and J.M. Van Dyke. (Leiden [The Netherlands]: Martinus Nijhoff, 2009). 306 p.

Nelson, L. D. M. The Settlement of Disputes Arising from Conflicting Outer Continental Shelf Claims. *International Journal of Marine and Coastal Law* vol. 24, iss. 2 (2009): p. 409.

Nessel, L. A. Externalized Borders and the Invisible Refugee. *Columbia Human Rights Law Review* vol. 40, iss. 3 (2009): p. 625.

Noyes, J. E. Judicial and Arbitral Proceedings and the Outer Limits of the Continental Shelf. *Vanderbilt Journal of Transnational Law* vol. 42, iss. 4 (2009): p. 1211.

Oxman, B. The Territorial Temptation: A Siren Song at Sea. In *International Law: Classic and Contemporary Readings*. Edited by C. Ku and P.F. Diehl. 3rd ed. (Boulder, Colorado [United States]: Lynne Rienner, 2008). p. 401.

Pedersen, T., and T. Henriksen. Svalbard's Maritime Zones: The End of Legal Uncertainty? *The International Journal of Marine and Coastal Law* vol. 24 (2009): p. 141–161.

Peterson, A.M. Sino-Japanese Cooperation in the East China Sea: A Lasting Arrangement? *Cornell International Law Journal* vol. 42, iss. 3 (2009): p. 441.

Reichert, C. Determining the Outer Continental Shelf Limits and the Role of the Commission on the Limits of the Continental Shelf. *International Journal of Marine and Coastal Law* vol. 24, iss. 2 (2009): p. 387.

Sand, P.H. R (on the Application of Bancoult) v. Secretary of State for Foreign and Commonwealth Affairs: Validity of 'Prerogative' Colonial Law—Expulsion of Indigenous Population—Magna Carta—UN Charter Article 73—Justiciability—U.S. Military Base—UN Convention on the Law of the Sea—Climate Change. *American Journal of International Law* vol. 103, iss. 2 (2009): p. 317.

Schoenberg, P.L. A Polarizing Dilemma: Assessing Potential Regulatory Gap-Filling Measures for Arctic and Antarctic Marine Genetic Resource Access and Benefit Sharing. *Cornell International Law Journal* vol. 42, iss. 2 (2009): p. 271.

Sielen, A. The New International Rules on Ocean Dumping: Promise and Performance. *Georgetown International Environmental Law Review* vol. 21, iss. 2 (2009): p. 295.

Siousiouras, P., and I. Tsouros. Island Regime in the Context of the Montego Bay Convention on the Law of the Sea. *Revue Hellénique de droit international* (2007): p. 359.

Tsaltas, G.I. L'aspect géostratégique de la Méditerranée: le cas particulier de l'application des principes de la Convention des Nations Unies sur le droit de la mer par les États côtiers. *Revue Hellénique de droit international* (2008): p. 687.

Vidas, D. The UN Convention on the Law of the Sea, the European Union and the Rule of Law: What is Going on in the Adriatic Sea? *The International Journal of Marine and Coastal Law* vol. 24, iss. 1 (2009): p. 1.

Walker, G.K. Filling some of the Gaps: The International Law Association (American Branch) Law of the Sea Definitions Project. *Fordham International Law Journal* vol. 32, iss. 4 (2009): p. 1336.

22. Law of treaties

Alvarez, J.E. The New Treaty Makers. In *International Law: Classic and Contemporary Readings.* Edited by C. Ku and P. F. Diehl. 3rd ed. (Boulder, Colorado [United States]: Lynne Rienner, 2008). p. 101.

Escarameia, P. Comment: The Contribution of the Law of Treaties to Peace. In *Peace through International Law: The Role of the International Law Commission. A Colloquium at the Occasion of its Sixtieth Anniversary.* Edited by G. Nolte. (Dordrecht [The Netherlands]: Springer, 2009). p. 105.

Feldman, A. M. Evolving Treaty Obligations: A Proposal for Analyzing Subsequent Practice Derived from WTO Dispute Settlement. *New York University Journal of International Law and Politics* vol. 41, iss. 3 (2009): p. 655.

Fitzmaurice, M. Dynamic (Evolutive) Interpretation of Treaties, Part I. In *Hague Yearbook of International Law = Annuaire De La Haye De Droit International.* (Dordrecht [The Netherlands]: Nijhoff, 2008). p. 101.

Hafner, G. Comment: The Vienna Convention on the Law of Treaties and its Contribution to Peace. In *Peace through International Law: The Role of the International Law Commission. A Colloquium at the Occasion of its Sixtieth Anniversary.* Edited by G. Nolte. (Dordrecht [The Netherlands]: Springer, 2009). p. 111.

Heinrich, D. M. International Law and Constitutional Law: International Court of Justice and Executive Power–Interpreting and Implementing International Treaty Obligations. *North Dakota Law Review* vol. 85, iss. 2 (2009): p. 435.

Kolb, R. Observation sur l'évolution du concept de *jus cogens*. *Revue générale de droit international public* vol. 113, iss. 4 (2009): p. 837.

Lantis, J. S. *The Life and Death of International Treaties: Double-Edged Diplomacy and the Politics of Ratification in Comparative Perspective.* (Oxford [United Kingdom]: Oxford University, 2009). 288 p.

Rohan Perera, A. Comment: The Contribution of the Law of Treaties to Peace. In *Peace through International Law: The Role of the International Law Commission. Colloquium at the Occasion of its Sixtieth Anniversary.* Edited by G. Nolte. (Dordrecht [The Netherlands]: Springer, 2009). p. 119.

Vermeer-Künzli, A. The Merits of Reasonable Flexibility: The Contribution of the Law of Treaties to Peace. In *Peace through International Law: The Role of the International Law Commission. A Colloquium at the Occasion of its Sixtieth Anniversary.* Edited by G. Nolte. (Dordrecht [The Netherlands]: Springer, 2009). p. 67.

Villiger, M.E. *Commentary on the 1969 Vienna Convention on the Law of Treaties*. (Leiden [The Netherlands]: Martinus Nijhoff, 2009). 1057 p.

23. Membership and representation

Grant, T. D. International Responsibility and the Admission of States to the United Nations. *Michigan Journal of International Law* vol. 30, iss. 4 (2009): p. 1095.

—. *Admission to the United Nations: Charter Article 4 and the Rise of Universal Organization*. (Leiden [The Netherlands]: Martinus Nijhoff Publishers, 2009). 332 p.

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.

Talmon, S. Participation of UN Member States in the Work of the Organization: A Multicultural Alternative to Present-Day Regionalism? In *Multiculturalism and International Law: Essays in Honour of Edward McWhinney.* Edited by S. Yee and J. Morin. (Leiden [The Netherlands]: Martinus Nijhoff, 2009). p. 239.

24. Natural resources

Bilsky, E. A. Conserving Marine Wildlife through World Trade Law. *Michigan Journal of International Law* vol. 30, iss. 3 (2009): p. 599.

Boisson de Chazournes, L. Comment: Trends in the Law Applicable to Freshwaters. In *Peace through International Law: The Role of the International Law Commission. A Colloquium at the Occasion of its Sixtieth Anniversary.* Edited by G. Nolte. (Dordrecht [The Netherlands]: Springer, 2009). p. 157.

Candioti, E. Comment: International Law of Shared Natural Resources and Peace. In *Peace through International Law: The Role of the International Law Commission. A Colloquium at the Occasion of its Sixtieth Anniversary.* Edited by G. Nolte. (Dordrecht [The Netherlands]: Springer, 2009). p. 151.

Duff, J.A. Assemblage-Oriented Resource Management: How the Marine Environment Washes Over Traditional Territorial Lines. *Michigan Journal of International Law* vol. 30, iss. 3 (2009): p. 643.

Matz-Lück, N. The Benefits of Positivism: The ILC's Contribution to the Peaceful Sharing of Transboundary Groundwater. In *Peace through International Law: The Role of the International Law Commission. A Colloquium at the Occasion of its Sixtieth Anniversary.* Edited by G. Nolte. (Dordrecht [The Netherlands]: Springer, 2009). p. 125.

McCaffrey, S. C. The International Law Commission Adopts Draft Articles on Transboundary Aquifers. *American Journal of International Law* vol. 103, iss. 2 (2009): p. 272.

McGregor, M. A. Ending Corporate Impunity: How to really Curb the Pillaging of Natural Resources. *Case Western Reserve Journal of International Law* vol. 42, iss. 1–2 (2009): p. 469.

Van Bockstael, S., and K. Vlassenroot. From Conflict to Development Diamonds: The Kimberley Process, and Africa's Artisanal Diamond Mines. *Studia Diplomatica The Brussels Journal of International Relations* vol. LXII, iss. 2 (2009): p. 79.

Yamada, C. Comment: The ILC's Contribution to the Peaceful Sharing of Transboundary Groundwater. In *Peace through International Law: The Role of the International Law Commission. A Colloquium at the Occasion of its Sixtieth Anniversary.* Edited by G. Nolte. (Dordrecht [The Netherlands]: Springer, 2009). p. 173.

25. Non-governmental organizations

Galenskaya, L. The International Institutional System and International Non-Governmental Organizations. In *Multiculturalism and International Law: Essays in Honour of Edward McWhinney.* Edited by S. Yee and J. Morin. (Leiden [The Netherlands]: Martinus Nijhoff, 2009). p. 415.

Van den Bossche, P. NGO Involvement in the WTO: A Comparative Perspective. *Journal of International Economic Law* vol. 11, iss. 4 (2008): p. 717.

26. Non-self-governing territories

Epstein, P. Behind Closed Doors: 'Autonomous Colonization' in Post United Nations Era—the Case for Western Sahara. *Annual Survey of International and Comparative Law* vol. 15, iss. 1 (2009): p. 107–143.

Sand, P.H. R (on the Application of Bancoult) v. Secretary of State for Foreign and Commonwealth Affairs: Validity of 'Prerogative' Colonial Law—Expulsion of Indigenous Population—Magna Carta—UN Charter Article 73—Justiciability—U.S. Military Base—UN Convention on the Law of the Sea—Climate Change. *American Journal of International Law* vol. 103, iss. 2 (2009): p. 317.

27. Peaceful settlement of disputes

Bercovitch, J., and S. S. Gartner. *International Conflict Mediation: New Approaches and Findings*. (London [United Kingdom]: Routledge, 2009). 311 p.

Bercovitch, J., V. A. Kremenyuk, and I. W. Zartman. *The SAGE Handbook of Conflict Resolution*. (Los Angeles, California [United States]: Sage, 2009). 682 p.

Delahunty, R. J., and A.F. Perez. The Kosovo Crisis: A Dostoievskian Dialogue on International Law, Statecraft, and Soulcraft. *Vanderbilt Journal of Transnational Law* vol. 42, iss. 1 (2009): p. 15.

Mendelson, M. International Dispute Settlement: Developments and Challenges. *Revue Hellénique de droit international* (2008): p. 463.

Peck, C. United Nations Mediation Experience: Practical Lessons for Conflict Resolution. In *The SAGE Handbook of Conflict Resolution*. Edited by J. Bercovitch, V. A. Kremenyuk, and I. W. Zartman. (London [United Kingdom]: Sage, 2009). p. 413–434.

Tams, C. J., C. Bouguillon, and J. M. Lyon III. La deuxième conférence de La Haye et la règlement pacifique des différends. *Revue generale de droit international public* vol. 113, iss. 1 (2009): p. 75.

28. Peacekeeping and related activities

Al-Qaq, R. K. *Managing World Order: United Nations Peace Operations and the Security Agenda*. (London [United Kingdom]: Tauris Academic Studies, 2009). 260 p.

Autesserre, S. Hobbes and the Congo: Frames, Local Violence, and International Intervention. *International Organization* vol. 63, iss. 2 (2009): p. 249.

Baker, B., and E. Scheye. Access to Justice in a Post-Conflict State: Donor-Supported Multidimensional Peacekeeping in Southern Sudan. *International Peacekeeping* vol. 16, iss. 2 (2009): p. 171.

Barnidge, R. P. J. The United Nations and the African Union: Assessing a Partnership for Peace in Darfur. *Journal of Conflict and Security Law* vol. 14, iss. 1 (2009): p. 93.

Breitegger, A. Sacrificing the Effectiveness of the European Convention on Human Rights on the Altar of the Effective Functioning of Peace Support Operations: A Critique of *Behrami, Saramati* and *Al Jedda*. *International Community Law Review* vol. 11, iss. 2 (2009): p. 155.

Cutts, S., and M. Noelle. Enemies through the Gates: Russian Violations of International Law in the Georgia/Abkhazia Conflict. *Case Western Reserve Journal of International Law* vol. 40, iss. 1–2 (2007): p. 281.

Diehl, P. F. Peacekeeping and Beyond. In *The SAGE Handbook of Conflict Resolution*. Edited by J. Bercovitch, V.A. Kremenyuk, and I.W. Zartman. (London [United Kingdom]: Sage, 2009). p. 525.

Engdahl, O. Compliance with International Humanitarian Law in Multinational Peace Operations. *Nordic Journal of International Law* vol. 78, iss. 4 (2009): p. 513.

Gegout, C. The West, Realism and Intervention in the Democratic Republic of Congo (1996–2006). *International Peacekeeping* vol. 16, iss. 2 (2009): p. 231.

Hatto, R. UN Command and Control Capabilities: Lessons from UNIFIL's Strategic Military Cell. *International Peacekeeping* vol. 16, iss. 2 (2009): p. 186.

Holt, V.K., and A.J. Boucher. Framing the Issue: UN Responses to Corruption and Criminal Networks in Post-Conflict Settings. *International Peacekeeping* vol. 16, iss. 1 (2009): p. 20.

Housing, Land, and Property Rights in Post-Conflict United Nations and Other Peace Operations: A Comparative Survey and Proposal for Reform. Edited by S. Leckie. (New York [United States]: Cambridge University, 2009). 372 p.

Kolb, R. *Ius Contra Bellum*. 2nd ed. (Brussels [Belgium]: Bruylant, 2009).

Leck, C. International Responsibility in United Nations Peacekeeping Operations: Command and Control Arrangements and the Attribution of Conduct. *Melbourne Journal of International Law* vol. 10, iss. 1 (2009): p. 346.

Lyck, M. *Peace Operations and International Criminal Justice: Building Peace After Mass Atrocities*. (London [United Kingdom]: Routledge, 2009). 265 p.

McLaughlin, R. *United Nations Naval Peace Operations in the Territorial Sea*. (Leiden [The Netherlands]: Martinus Nijhoff, 2009). 260 p.

Messineo, F. The House of Lords in *Al-Jedda* and Public International Law: Attribution of Conduct to UN-Authorized Forces and the Power of the Security Council to Displace Human Rights. *Netherlands International Law Review* vol. 56, iss. 1 (2009): p. 35.

Mobekk, E. Security Sector Reform and the UN Mission in the Democratic Republic of Congo: Protecting Civilians in the East. *International Peacekeeping* vol. 16, iss. 2 (2009): p. 273.

Morsut, C. Effective Multilateralism? EU-UN Cooperation in the DRC, 2003–2006. *International Peacekeeping* vol. 16, iss. 2 (2009): p. 261.

Muggah, R., and K. Krause. Closing the Gap between Peace Operations and Post-Conflict Insecurity: Towards a Violence Reduction Agenda. *International Peacekeeping* vol. 16, iss. 1 (2009): p. 136–150.

Nasu, H. *International Law on Peacekeeping: A Study of Article 40 of the UN Charter*. (Leiden [the Netherlands]: Martinus Nijhoff, 2009). 324 p.

Ndulo, M. The United Nations Responses to the Sexual Abuse and Exploitation of Women and Girls by Peacekeepers during Peacekeeping Missions. *Berkeley Journal of International Law* vol. 27, iss. 1 (2009): p. 127.

Post-Conflict Peacebuilding: A Lexicon Edited by V. Chetail. Oxford University Press, 2009). 387 p.

Tull, D.M. Peacekeeping in the Democratic Republic of Congo: Waging Peace and Fighting War. *International Peacekeeping* vol. 16, iss. 2 (2009): p. 215.

van der Lijn, J. If Only there were a Blueprint! Factors for Success and Failure of UN Peace-Building Operations. *International Peacekeeping* vol. 13, iss. 1/2 (2009): p. 45.

Warner, D., and G. Giacca. Responsibility to Protect. In *Post-Conflict Peacebuilding: A Lexicon*. Edited by V. Chetail. (Oxford [United Kingdom]: Oxford University, 2009). p. 291.

White, N. Peace Operations. In *Post-Conflict Peacebuilding: A Lexicon*. Edited by V. Chetail. (Oxford [United Kingdom]: Oxford University, 2009). p. 213.

Wills, S. *Protecting Civilians: The Obligations of Peacekeepers*. (Oxford [United Kingdom]: Oxford University, 2009). 296 p.

29. Political and security questions

Corten, O., and A. Lagerwall. La violation d'un cessez-le-feu constitue-t-elle nécessairement une violation de l'Article 2§4 de la Charte des Nations Unies? *Revue Hellénique de droit international* (2008): p. 87.

Gidvani, N. D. The Peaceful Resolution of Kashmir: A United Nations Led Effort for Successful International Mediation and a Permanent Resolution to the India-Pakistan Conflict. *Transnational Law and Contemporary Problems* vol. 18, iss. 3 (2009): p. 721.

30. Progressive development and codification of international law (in general)

Abtahi, H., and P. Webb. *The Genocide Convention: The Travaux Préparatoires*. (Leiden [The Netherlands]: Nijhoff, 2008).

Basic Documents in International Law. Edited by I. Brownlie. 6th ed. ed. (Oxford [The United Kingdom]: Clarendon Press, 2009). 418 p.

Daase, C. The ILC and Informalization. In *Peace through International Law: The Role of the International Law Commission. A Colloquium at the Occasion of its Sixtieth Anniversary*. Edited by G. Nolte. (Dordrecht [The Netherlands]: Springer, 2009). p. 179.

Melish, T. J. From Paradox to Subsidiarity: The United States and Human Rights Treaty Bodies. *Yale Journal of International Law* vol. 34, iss. 2 (2009): p. 389.

Pronto, A. Consideration of the Protection of Persons in the Event of Disasters by the International Law Commission. *ILSA Journal of International and Comparative Law* vol. 15, iss. 2 (2009): p. 449.

Shelton, D. Normative Hierarchy in International Law. In *International Law: Classic and Contemporary Readings*. Edited by C. Ku and P. F. Diehl. 3rd ed. (Boulder, Colorado [United States]: Lynne Rienner, 2008). p. 77.

Simma, B. Peace through Law: The Role of the ILC. In *Peace through International Law: The Role of the International Law Commission. A Colloquium at the Occasion of its Sixtieth Anniversary*. Edited by G. Nolte. (Dordrecht [the Netherlands]: Springer, 2009). p. 189.

Sucharitkul, S. Legal Multiculturalism and the International Law Commission. In *Multiculturalism and International Law: Essays in Honour of Edward McWhinney*. Edited by S. Yee and J. Morin. (Leiden [The Netherlands]: Martinus Nijhoff, 2009). p. 301.

Xue, H. The Role of the ILC's Work in Promoting World Peace and Security: Definition and Evaluation. In *Peace through International Law: The Role of the International Law Commission. A Colloquium at the Occasion of its Sixtieth Anniversary*. Edited by G. Nolte. (Dordrecht [the Netherlands]: Springer, 2009). p. 183.

31. Recognition of States

Vidmar, J. International Legal Responses to Kosovo's Declaration of Independence. *Vanderbilt Journal of Transnational Law* vol. 42, iss. 3 (2009): p. 779.

32. Refugees and internally displaced persons

Betts, A. *Protection by Persuasion: International Cooperation in the Refugee Regime*. (Ithaca [New York, United States]: Cornell University Press, 2009). 214 p.

Carr, S. From Theory to Practice: National and Regional Application of the Guiding Principles. *International Journal of Refugee Law* vol. 21, iss. 1 (2009): p. 34.

D'Angelo, E. F. Non-Refoulement: The Search for a Consistent Interpretation of Article 33. *Vanderbilt Journal of Transnational Law* vol. 42, iss. 1 (2009): p. 279.

Darling, K. Protection of Stateless Persons in International Asylum and Refugee Law. *International Journal of Refugee Law* vol. 21, iss. 4 (2009): p. 742.

Fischer-Lescano, A., T. Lohr, and T. Tohidipur. Border Controls at Sea: Requirements Under International Human Rights and Refugee Law. *International Journal of Refugee Law* vol. 21, iss. 2 (2009): p. 256.

Foster, M. Non-Refoulement on the Basis of Socio-Economic Deprivation: The Scope of Complementary Protection in International Human Rights Law. *New Zealand Law Review*, iss. 2 (2009): p. 257.

Lambert, H. International Refugee Law: Dominant and Emerging Approaches. In *Routledge Handbook of International Law*. Edited by D. Armstrong. (London [United Kingdom]: Routledge, 2009). p. 344.

Mathew, D. Claims of Political Asylum Based on Non-Physical Forms of Harm such as Economic Sanctions and Deprivations. *Pace International Law Review* vol. 21, iss. 1 (2009): p. 309.

Nessel, L.A. Externalized Borders and the Invisible Refugee. *Columbia Human Rights Law Review* vol. 40, iss. 3 (2009): p. 625.

Sweeney, J. A. Credibility, Proof and Refugee Law. *International Journal of Refugee Law* vol. 21, iss. 4 (2009): p. 700.

Wagner, K. UNHCR's Involvement in the Great Lakes Refugee Crisis. *Pace International Law Review* vol. 21, iss. 1 (2009): p. 365.

Zieck, M. Doomed to Fail from the Outset? UNHCR's Convention Plus Initiative Revisited. *International Journal of Refugee Law* vol. 21, iss. 3 (2009): p. 387.

33. Rule of law

Gowlland-Debbas, V., and V. Pergantis. Rule of Law. In *Post-Conflict Peacebuilding: A Lexicon*. Edited by V. Chetail. (Oxford [United Kingdom]: Oxford University, 2009). p. 320.

Tunheim, J. Rule of Law and the Kosovo Constitution. *Minnesota Journal of International Law* vol. 18, iss. 2 (2009): p. 371–379.

Vicien-Milburn, M. Promoting the Rule of Law within the United Nations. *International Lawyer* vol. 43, iss. 1 (2009): p. 51.

34. Self-defence

Anand, R. *Self-Defense in International Relations*. (New York [United States]: Palgrave Macmillan, 2009). 191 p.

Fitzgerald, M. A. Seizing Weapons of Mass Destruction from Foreign-Flagged Ships on the High Seas Under Article 51 of the UN Charter. *Virginia Journal of International Law* vol. 49, iss. 2 (2009): p. 473.

Green, J. A. Fluctuating Evidentiary Standards for Self-Defence in the International Court of Justice. *International and Comparative Law Quarterly* vol. 58, iss. 1 (2009): p. 163–179.

—. *The International Court of Justice and Self-Defence in International Law*. (Oxford, United Kingdom: Hart, 2009). 229 p.

Murase, S. Unilateral Responses to International Terrorism: Self-Defense Or Law Enforcement? In *Multiculturalism and International Law: Essays in Honour of Edward McWhinney*. Edited by S. Yee and J. Morin. (Leiden [the Netherlands]: Martinus Nijhoff, 2009). p. 429.

Sadoff, D. A. A Question of Determinacy: The Legal Status of Anticipatory Self-Defense. *Georgetown Journal of International Law* vol. 40, iss. 2 (2009): p. 523.

—. Striking a Sensible Balance on the Legality of Defensive First Strikes. *Vanderbilt Journal of Transnational Law* vol. 42 (2009): p. 441.

35. Self-determination

Thomas, R. Distinct Cases of Kosovo and South Ossetia: Deciding the Question of Independence on the Merits and International Law. *Fordham International Law Journal* vol. 32, iss. 6 (2009): p. 1990.

Wilson, G. Self-Determination, Recognition and the Problem of Kosovo. *Netherlands International Law Review* vol. 56, iss. 3 (2009): p. 455–481.

Zyberi, G. Self-Determination through the Lens of the International Court of Justice. *Netherlands International Law Review* vol. 56, iss. 3 (2009): p. 429–453.

36. State responsibility

Aust, H. P. The Normative Environment for Peace: On the Contribution of the ILC's Articles on State Responsibility. In *Peace through International Law: The Role of the International Law Commission. A Colloquium at the Occasion of its Sixtieth Anniversary*. Edited by G. Nolte. (Dordrecht [the Netherlands]: Springer, 2009). p. 13.

Bianchi, A. State Responsibility and Criminal Liability of Individuals. In *The Oxford Companion to International Criminal Justice*. Edited by A. Cassese. (New York [United States]: Oxford University Press, 2009). p. 16.

Frowein, J. A. Comment: State Responsibility and Peace. In *Peace through International Law: The Role of the International Law Commission. A Colloquium at the Occasion of its Sixtieth Anniversary*. Edited by G. Nolte. (Dordrecht [the Netherlands]: Springer, 2009). p. 47.

Gaja, G. Comment: The Impact of Security Council Resolutions on State Responsibility. In *Peace through International Law: The Role of the International Law Commission. A Colloquium at the Occasion of its Sixtieth Anniversary*. Edited by G. Nolte. (Dordrecht [The Netherlands]: Springer, 2009). p. 53.

Galicki, Z. Comment: State Responsibility and Peace. In *Peace through International Law: The Role of the International Law Commission. A Colloquium at the Occasion of its Sixtieth Anniversary*. Edited by G. Nolte. (Dordrecht [the Netherlands]: Springer, 2009). p. 61.

Jones, O. R. Implausible Deniability: State Responsibility for the Actions of Private Military Firms. *Connecticut Journal of International Law* vol. 24, iss. 2 (2009): p. 239.

Linderfalk, U. State Responsibility and the Primary-Secondary Rules Terminology: The Role of Language for an Understanding of the International Legal System. *Nordic Journal of International Law* vol. 78, iss. 1 (2009): p. 53.

Mazzeschi, P. R. Responsabilité de l'État pour violation des obligations positives relatives aux droits de l'homme. *Collected Courses of the Hague Academy of International Law* vol. 333 (2008): p. 175.

Milanović, M. State Responsibility for Acts of Non-State Actors: A Comment on Griebel and Plücken. *Leiden Journal of International Law* vol. 22, iss. 2 (2009): p. 307.

Nolte, G., and H. P. Aust. Equivocal Helpers: Complicit States, Mixed Messages and International Law. *International and Comparative Law Quarterly* vol. 58, iss. 1 (2009): p. 1.

Ohlin, J. D. State Responsibility for Conspiracy, Incitement and Attempt to Commit Genocide. In *The UN Genocide Convention: A Commentary*. Edited by P. Gaeta. (Oxford [United Kingdom]: Oxford University Press, 2009). p. 374.

Palchetti, P. State Responsibility for Complicity in Genocide. In *The UN Genocide Convention: A Commentary*. Edited by P. Gaeta. (Oxford [United Kingdom]: Oxford University, 2009). p. 381.

Scobbie, I. Assumptions and Presuppositions: State Responsibility for System Crimes. In *System Criminality in International Law*. Edited by A. Nollkaemper and H. van der Wil. (Cambridge [United Kingdom]: Cambridge University, 2009). p. 270.

Seibert-Fohr, A. State Responsibility for Genocide Under the Genocide Convention. In *The UN Genocide Convention: A Commentary*. Edited by P. Gaeta. (Oxford [United Kingdom]: Oxford University, 2009). p. 349.

Zimmermann, A., and M. Teichmann. State Responsibility for International Crimes. In *System Criminality in International Law.* Edited by A. Nollkaemper and H. van der Wil. (Cambridge [United Kingdom]: Cambridge University, 2009). p. 298.

37. State sovereignty

Peters, A. Humanity as the [Alpha] and [Omega] of Sovereignty. *European Journal of International Law* vol. 20, iss. 3 (2009): p. 513.

—. Humanity as the [Alpha] and [Omega] of Sovereignty: A Rejoinder to Emily Kidd White, Catherine E. Sweetser, Emma Dunlop and Amrita Kapur. *European Journal of International Law* vol. 20, iss. 3 (2009): p. 569.

Weckel, P. Plaidoyer pour le processus d'indépendance du Kosovo, réponse à Olivier Corten. *Revue générale de droit international public* vol. 113, iss. 2 (2009): p. 257.

White, E.K., *et al*. Humanity as the [Alpha] and [Omega] of Sovereignty: Four Replies to Anne Peters. *European Journal of International Law* vol. 20, iss. 3 (2009): p. 545.

38. State succession

Delahunty, R. J., and A. F. Perez. The Kosovo Crisis: A Dostoievskian Dialogue on International Law, Statecraft, and Soulcraft. *Vanderbilt Journal of Transnational Law* vol. 42, iss. 1 (2009): p. 15.

Milanovic, M. Territorial Application of the Genocide Convention and State Succession. In *The UN Genocide Convention: A Commentary.* Edited by P. Gaeta. (Oxford [United Kingdom]: Oxford University, 2009). p. 473.

Wolfrum, R. Kosovo: Some Thoughts on its Future Status. In *Multiculturalism and International Law: Essays in Honour of Edward McWhinney.* Edited by S. Yee and J. Morin. (Leiden [The Netherlands]: Martinus Nijhoff, 2009). p. 561.

39. Transitional justice

Abdulhak, T. Building Sustainable Capacities from an International Tribunal to a Domestic War Crimes Chamber for Bosnia and Herzegovina. *International Criminal Law Review* vol. 9, iss. 2 (2009): p. 333.

Ambos, K. The Legal Framework of Transitional Justice: A Systematic Study with a Special Focus on the Role of the ICC. In *Building a Future on Peace and Justice.* Edited by K. Ambos, J. Large, and M. Wierda. (Berlin [Germany]: Springer, 2009). p. 19.

Arraiza, J. M., and M. Moratti. Getting the Property Questions Right: Legal Policy Dilemmas in Post-Conflict Property Restitution in Kosovo (1999–2009). *International Journal of Refugee Law* vol. 21, iss. 3 (2009): p. 421.

d'Aspremont, J. Post-Conflict Administrations as Democracy-Building Instruments. *Chicago Journal of International Law* vol. 9, iss. 1 (2008): p. 1.

Baker, B., and E. Scheye. Access to Justice in a Post-Conflict State: Donor-Supported Multidimensional Peacekeeping in Southern Sudan. *International Peacekeeping* vol. 16, iss. 2 (2009): p. 171.

Bisset, A. Rethinking the Powers of Truth Commissions in Light of the ICC Statute. *Journal of International Criminal Justice* vol. 7, iss. 5 (2009): p. 963.

Buyse, A. Home Sweet Home? Restitution in Post-Conflict Bosnia and Herzegovina. *Netherlands Quarterly of Human Rights* vol. 27, iss. 1 (2009): p. 9.

de Brabandere, E. *Post-Conflict Administrations in International Law: International Territorial Administration, Transitional Authority and Foreign Occupation in Theory and Practice*. (Leiden [The Netherlands]: Martinus Nijhoff, 2009). 332 p.

De Vrieze, F. The Assembly of Kosovo during its Second Mandate (2004–2007). Analysis of the Functioning of a Young Parliament Under International Supervision. *Studia Diplomatica* vol. LXII, iss. 1 (2009): p. 75.

Eltringham, N. We are Not a Truth Commission: Fragmented Narratives and the Historical Record at the International Criminal Tribunal for Rwanda. *Journal of Genocide Research* vol. 11, iss. 1 (2009): p. 55.

La Rosa, A., and X. Philippe. Transitional Justice. In *Post-Conflict Peacebuilding: A Lexicon*. Edited by V. Chetail. (Oxford [United Kingdom]: Oxford University, 2009). p. 368.

Saul, M. From Haiti to Somalia: The Assistance Model and the Paradox of State Reconstruction in International Law. *International Community Law Review* vol. 11, iss. 1 (2009): p. 119.

Tansey, O. *Regime-Building: Democratization and International Administration*. (Oxford [United Kingdom]: Oxford University, 2009). 248 p.

Tolbert, D., and A. Kontic. The International Criminal Tribunal for the Former Yugoslavia: Transitional Justice, the Transfer of Cases to National Courts, and Lessons for the ICC. In *The Emerging Practice of the International Criminal Court*. Edited by C. Stahn and G. Sluiter. (Leiden [The Netherlands]: Nijhoff, 2009). p. 135.

40. Use of force

Dinstein, Y. The Hazards of Interdisciplinary Pollination: Some Critical Comments on *Defending Humanity*. *Journal of International Criminal Justice* vol. 7, iss. 3 (2009): p. 517.

Higgins, N., and K. O'Reilly. The Use of Force, Wars of National Liberation and the Right to Self-Determination in the South Ossetian Conflict. *International Criminal Law Review* vol. 9, iss. 3 (2009): p. 567.

Kritsiotis, D. Close Encounters of a Sovereign Kind. *European Journal of International Law* vol. 20, iss. 2 (2009): p. 299.

McKeever, D. The Contribution of the International Court of Justice to the Law on the Use of Force: Missed Opportunities Or Unrealistic Expectations? *Nordic Journal of International Law* vol. 78, iss. 3 (2009): p. 361.

Rostow, N. International Law and the Use of Force: A Plea for Realism. *Yale Journal of International Law* vol. 34, iss. 2 (2009): p. 549.

Shany, Y. The Analogy's Limit: Defending the Rights of Peoples. *Journal of International Criminal Justice* vol. 7, iss. 3 (2009): p. 541.

Šturma, P. Enforcing International Obligations through the Use of Force? *Revue Hellénique de droit international* (2008): p. 595.

van der Wilt, Harmen G. Can Romantics and Liberals be Reconciled? Some further Reflections on *Defending Humanity*. *Journal of International Criminal Justice* vol. 7, iss. 3 (2009): p. 529.