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Part Four. Bibliography

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-eighth 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 2010.

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 2010.

Chapter VIII contains decisions given in 2010 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 2010.

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
BNUB	United Nations Office in Burundi
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
CRB	Central review body
CTBT	Comprehensive Nuclear-Test-Ban Treaty
CTBTO	Comprehensive Nuclear-Test-Ban Treaty Organization
CTC	Counter-Terrorism Committee (Security Council)
CTED	Counter-Terrorism Committee Executive Directorate (Security Council)
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)
DSS	Department of Safety and Security (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)
IGO	Intergovernmental organization
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)
INTERPOL	International Criminal Police Organization
ISO	International Organization for Standardization
ISA	International Seabed Authority
ISAF	International Security Assistance Force
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)
LDC	Least Developed Country
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
MONUSCO	United Nations Organization Stabilization 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	Organisation 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
SOMA	Status-of-mission agreement
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 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
UNDOF	United Nations Disengagement Observer Force
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
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
UNITAR	United Nations Institute for Training and Research
UNJSPF	United Nations Joint Staff Pension Fund
UNMAS	United Nations Mine Action Service
UNMEE	United Nations Mission in Ethiopia and Eritrea
UNMIK	United Nations Interim Administration Mission in Kosovo
UNMIL	United Nations Mission in Liberia
UNMIN	United Nations Political Mission in Nepal
UNMIS	United Nations Mission in the Sudan
UNMIT	United Nations Integrated Mission in Timor-Leste
UNMOGIP	United Nations Military Observer Group in India and Pakistan
UNOCA	United Nations Regional Office for Central Africa
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
UNRWA	United Nations Relief and Works Agency for Palestine Refugees in the Near East
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

A. Sweden

During the period in question, two relevant amendments were made to Swedish laws:

1. The Instrument of Government (Swedish Code of Statutes 1974:152)*

Chapter 1. Basic principles of the form of government

. . .

Section 10

Sweden is member of the European Union. Sweden participates in international cooperation also within the framework of the United Nations and the Council of Europe and elsewhere.

. . .

2. Population Registration Act (Swedish Code of Statutes 1991:481)*

. . .

Section 5

A person who is a member of a mission or a career consulate of a foreign power, or its service staff, is registered only if he or she is a Swedish citizen, or, without being a Swedish citizen, resided here when he or she became a member of the mission, consulate or its service staff. This applies equally to a family member or a private servant of such person.

A person who is covered by Section 4 of the Act (1976:661) on Immunity and Privileges in Certain Cases and entitled to immunity and privileges equivalent to those of a diplomatic representative of the mission of a foreign power, is registered only if he or she is a Swedish citizen, or, without, being a Swedish citizen, resided here when he or she became a member of the international organ. This applies equally to a family member of such person.

. . .

* Unofficial translation provided by the Permanent Mission of Sweden to the United Nations. Entered into force on 1 January 2011.

B. Republic of Korea

On 30 December 2010, the Republic of Korea amended an enforcement decree in order to expand the range of diplomatic privileges to include officials of international organizations. The amended provision reads as follows:

Enforcement Decree of the Restriction of Special Taxation Act

Article 108

(1) The term "foreign diplomats stationed in Korea and other persons corresponding to them as prescribed by Presidential Decree" in Article 107 (7) of the Act means the officials of diplomatic missions, consular missions (except those of which the head is an honorary consul), the United Nations, and international organizations corresponding to those serving at the United Nations stationed in Korea (only when the officials may be granted privileges and immunities according to the treaties of which Korea is a signatory or other domestic laws and regulations) who either hold the public officials' status of the relevant country, or have been confirmed to have the corresponding status by the Minister of Foreign Affairs and Trade of Korea (hereafter in this Article, referred to as "diplomats, etc.").

Chapter II

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

A. Treaties concerning the legal status of the United Nations

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

No States acceded to the Convention in 2010. As at 31 December 2010, there were 157 States parties to the Convention.**

2. Agreements relating to missions, offices and meetings

(*a*) Exchange of letters constituting an agreement between the United Nations and the Government of the Republic of Senegal concerning the organization of the 2010 Economic and Social Council Annual Ministerial Review (AMR) Regional Preparatory Meeting focusing on the theme "Women and Health". New York, 29 December 2009 and 4 January 2010***

I

29 December 2009

Excellency,

I have the honour to refer to the arrangements concerning the organization of the 2010 Economic and Social Council Annual Ministerial Review (AMR) Regional Preparatory Meeting focusing on the theme "Women and Health" (hereinafter referred to as "the Meeting"). The Meeting will be held in Dakar, Senegal from 12–13 January 2010.

The Meeting is within the scope of General Assembly resolutions 60/265 and 61/16, and will be organized by the United Nations represented by the Department of Economic and Social Affairs (hereinafter referred to as "the United Nations"), in cooperation with

* 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.

*** Entered into force on 4 January 2010, in accordance with the provisions of the letters.

the Government of the Republic of Senegal represented by the Ministry of Foreign Affairs (hereinafter referred to as "the Government").

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

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

(*a*) 53 representatives from developing country governments in Africa invited jointly by the United Nations and the Government;

(*b*) 5 representatives from non-regional country governments invited jointly by the United Nations and the Government;

(*c*) 6 officials from the United Nations;

(*d*) 10 representatives of civil society, the private sector and academia, as well as experts invited jointly by the United Nations and the Government to participate as panellists;

(*e*) 45 representatives from UN system organizations (except those named in 1(c)) and other multilateral institutions, and experts from civil society, the private sector and academia (except those named in 1(d)) invited jointly by the United Nations and the Government;

(*f*) other participants, invited as observers by the United Nations and the Government.

2. The total number of participants will be between 100 and 125. The list of participants will be determined by the United Nations in consultation with the Government prior to the holding of the Meeting.

3. The Meeting will be conducted in English.

4. The United Nations will be responsible for the following:

(*a*) planning and running the Meeting and preparing the appropriate documentation, including the report of the Meeting;

(*b*) providing substantive support before and during the Meeting;

(*c*) providing support on administrative arrangements and funding, through designated voluntary contributions to the Trust Fund for the Annual Ministerial Review and the Development Cooperation Forum, relating to the issuance of airline tickets and daily subsistence allowance for the participants specified in sub-paragraphs 1(a), 1(c) and 1(d).

5. The Government will be responsible for the following:

(*a*) providing a conference venue for the Meeting;

(*b*) sending invitations to the selected participants in consultation with the United Nations;

(*c*) funding of hospitality (meals) of all participants;

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

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

(*f*) providing necessary communications facilities (telephone, facsimile and/or e-mail) for use by the secretariat of the Meeting to maintain contact with the United Nations and elsewhere;

(*g*) providing other local logistics and organizational services in support of the Meeting, including making hotel and transportation arrangements;

(*h*) providing security at the conference venue.

6. All facilities will be arranged through consultation between the United Nations and the Government.

7. The cost of transportation and daily subsistence allowance for participants and observers specified in sub-paragraphs 1(b), 1(e) and 1(f) above will be the responsibility of their respective organizations.

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

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

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

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

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

9. The Government shall furnish such police protection as may be required to ensure the effective functioning of the Meeting in an atmosphere of security and tranquility free

from interference of any kind. While such police services shall be under the direct supervision and control of a senior officer provided by the Government, this Officer shall work in close cooperation with a designated senior official of the United Nations.

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

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

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

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

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

11. Any dispute concerning the interpretation or implementation of this Agreement, except for the dispute subject to Section 30 of the Convention or to any other applicable agreement, shall, unless the parties otherwise agree, be resolved by negotiations or any other agreed mode of settlement. Any such dispute that is not settled by negotiation or any other agreed mode of settlement shall be submitted at the request of either party for a final decision to a tribunal of three arbitrators, one of whom shall be appointed by the Secretary-General of the United Nations, one by the Government and the third, who shall be the Chairperson, by the other two arbitrators. If either party does not appoint 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 nominations 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.

12. 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 Republic of Senegal, regarding the hosting of the 2010 Economic and Social Council Annual Ministerial Review (AMR) Regional Preparatory Meeting focusing on the theme "Women and health", which shall enter into force on the date of your reply and shall remain in force for the duration of the Meeting and for such additional period as is necessary for its preparation and for all matters relating to any of its provisions to be settled.

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

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

II

4 January 2010

Excellency,

I have the honour to refer to your letter with ref. No. DESA/09/1875 of 29 December 2009, relating to the arrangements for the hosting of the 2010 Economic and Social Council Annual Ministerial Review (AMR) Regional Preparatory Meeting on Women and Health to be held from 12–13 January 2010 in Dakar, Republic of Senegal.

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

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

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

[*Signed*] Paul Badji
Ambassador Extraordinary and Plenipotentiary
Permanent Representative

(*b*) Agreement between the Government of Guinea-Bissau and the United Nations for the grant under guarantee for the handover of Rear Admiral José Américo Bubo Na Tchuto to the Government of Guinea-Bissau. Bissau, 8 January 2010*

Whereas on the morning of the 28 Day of December 2009, Rear Admiral José Américo Bubo Na Tchuto, a Bissau-Guinean citizen, presented himself in the United Nations premises in Bissau, stating that he was afraid for his life;

Recognizing that the State of Guinea-Bissau has sovereignty over its territory, being responsible for the maintenance and preservation of peace within its borders;

Considering the serious and sensitive nature of the presence of Rear Admiral José Américo Bubo Na Tchuto on United Nations premises in light of the crimes that he was accused of and his request for protection;

Reaffirming that the United Nations and the Government of Guinea-Bissau are opposed to torture and other forms of inhumane or degrading treatment or punishment and to the violation of human rights and fundamental freedoms;

Recalling the obligation of all States under the Charter of the United Nations, in particular its Article 55, to promote universal respect for, and observance of, human rights and fundamental freedoms;

Having regard that the United Nations does not have the right or authority to grant asylum to any individual, whatsoever be his or her nationality, seeking refuge on United Nations premises;

* Entered into force on 8 January 2010 by signature.

Considering that the United Nations System in Guinea-Bissau has carried out extensive consultations with the national authorities with a view to resolving the matter of the presence of Rear Admiral José Américo Bubo Na Tchuto on its premises;

Taking into consideration that, following the notification from the Special Representative of the Secretary-General of the United Nations to the Government, reporting the presence on United Nations premises of Rear Admiral José Américo Bubo Na Tchuto, the Government issued a Communiqué in that sense, recalling the fact that the former Chief of Naval Staff is wanted on charges of an attempt against the Head of State, compromise of the Rule of Law and military desertion, and also stressing the Government's determination to ensure justice and to maintain tranquility and appealing to both Bissau-Guineans and the international community to remain calm;

It is hereby agreed as follows:

1) The present agreement between the Government of Guinea-Bissau and the United Nations (hereinafter referred to as "the Parties") for the grant under guarantee of the request of the Government of Guinea-Bissau for the handover of Rear Admiral José Américo Bubo Na Tchuto (hereinafter referred to as "the Agreement") is signed on this day 08/01/2010 and consists of the following terms and conditions:

2) It is acknowledged and accepted between the Parties that the United Nations premises in Bissau are and shall remain inviolable and subject to the exclusive control and authority of the United Nations in accordance with the Charter of the United Nations and general international law.

3) It is acknowledged and accepted between the Parties that the Government of Guinea-Bissau, as a sovereign authority, has jurisdiction over its nationals, particularly in matters of criminal justice.

4) Without prejudice to the inviolability of its premises, the United Nations undertakes to grant access to its premises in Bissau in order for a civilian delegation of the Government of Guinea-Bissau to carry out consultations with Rear Admiral José Américo Bubo Na Tchuto regarding his exit from the premises. In this connection, the Government of Guinea-Bissau undertakes to carry out all efforts possible, through consultations with Rear Admiral José Américo Bubo Na Tchuto, with a view to securing the latter's voluntary departure and formal handover to the competent national authorities of Guinea-Bissau.

5) The formal handover of Rear Admiral José Américo Bubo Na Tchuto shall be effected, following appropriate consultations and agreement to that effect, through his accompaniment and escort by relevant UN officials from within the inviolable safety of the United Nations premises to a meeting point where he will be received by the national authorities, which shall be outside the front gate of the United Nations premises.

6) It is agreed between the Parties that the Government of Guinea-Bissau and its authorities will take all necessary measures to ensure the protection and safety of Rear Admiral José Américo Bubo Na Tchuto and, in its treatment of him shall abide by the obligations under Article 55 of the Charter of the United Nations, as further specified in the Universal Declaration of Human Rights, in particular its Articles 5, 10, 11 and 13. If he is detained, United Nations officials shall be permitted to visit him to monitor his conditions of detention and, if he is prosecuted, shall be permitted to monitor his trial. If prosecuted

and found guilty, no sentence of death shall be imposed on him, as also stipulated in the Constitution of the Republic of Guinea-Bissau (Article 36(1)).

7) In accordance with Article 105 of the Charter of the United Nations, the Government shall ensure the protection of the United Nations premises, assets and personnel.

8) This Agreement is established in two original copies, in the English and Portuguese languages, each of which shall be equally authentic.

Government of the Republic of Guinea-Bissau:	Signed on behalf of the United Nations:
For H.E. Mr. Adelino Mano Queta	[*Signed*] Mr. Joseph Mutaboba
Minister for Foreign Affairs, International Cooperation and Communities	Special Representative of the Secretary-General in Guinea-Bissau
[*Signed*] Lassana Toure State Secretary for International Cooperation	

(*c*) Exchange of letters constituting an agreement between the United Nations and the Republic of Kenya concerning the United Nations Support Office for AMISOM ("UNSOA"). New York, 19 February 2010 and Nairobi, 2 March 2010*

I

19 February 2010

Excellency,

1. I have the honour to refer to resolution 1863 (2009) of 16 January 2009 by which the United Nations Security Council welcomed the Secretary-General's proposals for the immediate in kind enhancement of African Union Mission in Somalia ("AMISOM") through the transfer of assets following the liquidation of the United Nations Mission in Ethiopia and Eritrea ("UNMEE"), and requested the Secretary-General to provide a United Nations logistical support package to AMISOM, including equipment and services as described in his proposal (S/2OD8/804). I further refer to Security Council resolution 1872 (2009) of 26 May 2009 by which the Council requested the Secretary-General to continue to provide a logistical support package for AMISOM comprising equipment and services, as described in his letter to the President of the Security Council dated 30 June 2009 (S/2009/60) until 31 January 2010, which support package has further been renewed by Security Council resolution 1910 (2010) dated 28 January 2010 until 31 January 2011. The United Nations would like to express its profound appreciation to the Government of Kenya for the co-operation it has extended to the United Nations Support Office for AMISOM ("UNSOA"), which has been recently established for the purpose of delivering such a support package to AMISOM and is located at Nairobi.

2. UNSOA will require the continued cooperation of the Government of Kenya (hereinafter referred to as the "Government"), in particular for the purposes of facilitating the unimpeded movement of its members, as well as for the procurement, storage and

* Entered into force on 2 March 2010, in accordance with the provisions of the letters.

movement of its logistical supplies and equipment. UNSOA's operations in Kenya will also require support from the Government with respect to:

(*a*) preferential access by UNSOA to the seaport in Mombasa and airports in Mombasa and Nairobi, where aircraft parking space would be needed;

(*b*) the provision of space within the seaport and airport, including bonded warehousing facilities, to enable UNSOA to establish its logistics base in Mombasa, through which equipment will transit en route to destinations in Somalia;

(*c*) facilitation of the operation by UNSOA of a sea ferry for the transport of equipment and personnel between Mombasa and Mogadishu, with a Kenya Government provided maritime escort.

3. For this purpose, I propose for your Government's consideration and approval, the following terms for an agreement between the United Nations and Kenya concerning the UNSOA (this "Agreement").

4. The Agreement between the United Nations and the Republic of Kenya regarding the Headquarters of the United Nations Environment Programme, signed at Nairobi on 26 March 1975 shall apply *mutatis mutandis* to UNSOA as provided in section 45 of that Agreement, with respect to any matter to the extent that no specific provision for such matter has been made in this letter.

5. More specifically, I propose that the Government extend to UNSOA, its property, funds and assets and its members listed in paragraph 5 (a), (b) and (c) below, the privileges and immunities provided in the Convention on Privileges and Immunities of the United Nations to which the Kenya is a Party (the Convention). I propose, in particular, that your Government extend to:

(*a*) the officials of the United Nations assigned to serve with UNSOA, the privileges and immunities to which they are entitled under Article V and VII of the Convention. Locally recruited members of UNSOA, who are nationals or permanent residents of Kenya, shall enjoy the immunities concerning official acts and exemption from taxation and national service obligations provided for in sections 18 (a), (b) and (c) of the Convention;

(*b*) other persons assigned to perform missions for the United Nations or any of the relevant international organizations providing assistance to UNSOA, including United Nations civilian police and United Nations military liaison officers, shall enjoy, in the discharge of their functions, the privileges and immunities accorded to experts performing missions for the United Nations under Article VI and VII of the Convention;

(*c*) UNSOA and its members shall refrain from any action incompatible with the impartial and international nature of their duties or inconsistent with the spirit of the present arrangement. UNSOA and its members shall respect all local laws and regulations. The Government undertakes to respect the exclusively international nature of UNSOA.

6. Privileges and immunities are granted to UNSOA members in the interests of the United Nations and not for the personal benefit of the individuals themselves. The Secretary-General of the United Nations shall have the right and the duty to waive the immunity of any person in any case where in his/her opinion the immunity would impede the course of justice and can be waived without prejudice to the interests of the United Nations.

7. UNSOA shall co-operate at all times with the appropriate local 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 and facilities mentioned in this letter.

8. The privileges and immunities necessary for the fulfillment of the functions of UNSOA also include the following:

(i) the United Nations, its property and assets wherever located and by whomsoever held, shall enjoy immunity from every form of legal process except insofar as in any particular case it has expressly waived its immunity. It is, however, expressly understood that no waiver shall extend to any measure of execution;

(ii) the archives of the United Nations, and in general all documents belonging to it or held by it, shall be inviolable wherever located;

(iii) UNSOA shall be exempt from duties, taxes and charges except charges for services rendered. Special arrangements shall be made between UNSOA and the Government regarding the exemption or refund of the value-added tax;

(iv) freedom of entry and exit without delay or hindrance, of UNSOA members, their property and means of transport. For the purposes of entering the territory of the Republic of Kenya, the United Nations laissez-passer, or a national passport with the United Nations certificate or the UNSOA identity card will be required. Holders of a United Nations laissez-passer or a national passport together with a United Nations certificate or UNSOA identity card shall be exempt from any visa requirements. While UNSOA members shall be exempt from visa requirements and completion of entry and exit forms, they shall be required to present for identification, but not to surrender, such documents. The Government shall issue to UNSOA members, free of charge, without any restrictions and as promptly as possible, visas in any case where required. The Government shall especially facilitate the speedy travel and easy passage of UNSOA members and means of transport when entering or exiting from Kenya.

(v) freedom of movement throughout the country except in designated security zones, if any, of UNSOA, its members, property, equipment and means of transport. UNSOA, its members, their vehicles and aircraft shall use roads, bridges and airfields without the payment of dues, tolls, landing fees, parking fees, overflight fees and charges;

(vi) entry and exit without delay or hindrance of UNSOA members, and of its property, vehicles, any equipment and spare parts, provisions, supplies, materials and other goods (referred to hereinafter as "property and goods") free of any restrictions and payment of duties, charges or taxes. United Nations vehicles used for such transport shall carry a cargo manifest indicating the destination of the cargo;

(vii) issuance by the Government of any necessary authorizations, permits and licenses, for the importation or purchase by UNSOA or through contractors for the exclusive use of UNSOA of any property and goods free of any restrictions and without the payment of duties, charges or taxes;

(viii) acceptance by the Government of permits or licenses issued by the United Nations or other relevant international organizations for the operation of vehicles and vessels used in support of UNSOA (samples of such documents shall be

submitted to the Government); acceptance by the Government or where necessary, validation by the Government, free of charge and without any restriction of licenses and certificates already issued by appropriate authorities in other States in respect of aircraft used in support of UNSOA; prompt issuance by the Government, free of charge and without any restrictions, of necessary authorizations, licenses and certificates, where required for the acquisition, use, operation and maintenance of aircraft used in support of UNSOA;

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

(x) the right of UNSOA to unrestricted communication by radio, satellite or other forms of communication with the United Nations Headquarters and between the various offices and to connect with the Organization's 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;

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

9. The following arrangements shall apply to contractors and their employees engaged by UNSOA to perform services exclusively for UNSOA or to supply exclusively UNSOA ("UNSOA contractors"). Such arrangements will also apply to the property, equipment and spare parts, means of transport, provisions, supplies, materials and other goods used in support of UNSOA contractors:

(i) The Government shall facilitate the entry into, transit through, and exit from the country of UNSOA contractors, including their property, equipment and spare parts, means of transport, provisions, supplies, materials and other goods. UNSOA contractors shall be required to present national valid passports upon entering or departing from Kenya. The Government shall issue to UNSOA contractors the necessary visas, licenses or permits without any impediment. Contractors engaged by UNSOA shall be made known to the Government;

(ii) The equipment and spare parts, means of transport, provisions, supplies, materials and other goods in transit, purchased by UNSOA contractors for UNSOA, shall be free of any restrictions and without the payment of duties, charges or taxes. The payment of value-added tax by UNSOA contractors shall be subject to the special arrangements between UNSOA and the Government referred to in paragraph 8 (iii) above. The Government shall also issue promptly and without charges the necessary authorizations, permits and licenses to UNPOS Contractors;

(iii) UNSOA contractors and their vehicles and aircraft shall use roads, bridges and airfields without the payment of duties, taxes and charges except charges for services rendered, if any;

(iv) Where the equipment and spare parts, provisions, supplies, materials and other goods are destined for UNSOA within Kenya, UNSOA contractors are obliged to show documents to that effect, as well as relevant international freight documents when entering or exiting from Kenya. UNSOA contractors carrying equipment and spare parts, provisions, supplies, materials and other goods destined to the United Nations or to AMISOM in Somalia will show documents to this effect, and such equipment and spare parts, provisions, supplies, materials and other goods destined for Somalia may be stored in bonded warehouses as mentioned in paragraph 2 (a) above pending onward shipment to Somalia;

(v) Vehicles to transport goods for the purpose of UNSOA and which are not UNSOA vehicles, are obliged to have registration documents confirming the technical appropriateness of the vehicle for such use. Drivers of such vehicles are obliged to possess a license of the appropriate category of vehicle and a green card (i.e., evidence of paid insurance);

(vi) UNSOA contractors shall be given repatriation facilities in time of crises, at no cost to the Government.

10. The UNSOA office and all premises used by UNSOA for the conduct of its operational and administrative activities shall be inviolable and subject to the exclusive control and authority of the United Nations or as the case may be, of the relevant international organization operating under the United Nations' auspices. The consent of UNSOA to enter the premises shall be presumed in case of fire or other similar emergency requiring urgent action by the competent authorities of the Government. Any person who has entered UNSOA premises for the purpose of the above-mentioned accidents shall, if so requested by the United Nations leave such premises immediately.

11. The Government shall ensure that the provisions of the Convention on the Safety of United Nations and Associated Personnel, to which Kenya is a Party, are applied to and in respect of UNSOA, its members and associated personnel, its property and assets. The Government shall take all appropriate steps to protect members of UNSOA and their equipment and premises from attack or any action that prevents them from discharging their mandate.

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

13. If the above provisions meet with your approval. I would propose that this letter and your reply thereto constitute an agreement between the United Nations and the Government of Kenya with effect from the date of your reply, which agreement shall remain in force until the departure of the final element of UNSOA from Kenya.

14. I take this opportunity to express once again my gratitude to the Government of Kenya for the cooperation provided to the various organizations of the United Nations system based in Nairobi.

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

[*Signed*] Achim Steiner
Director-General
United Nations Office at Nairobi

II

Excellency,

I have the honour to acknowledge receipt of your letter of 19 February 2010, the content of which is as follows:

[*See letter I*]

I have the honour to inform you that the terms set out in your above-mentioned letter are acceptable to the Government of Kenya and, together with this letter shall constitute an agreement between the United Nations and the Government of Kenya concerning the status, privileges and immunities and activities of UNSOA, its personnel, property, funds and other assets, as well as its contractors in Kenya.

Done at Nairobi, Kenya, in the English Language on this 2nd day of March, 2010

[*Signed*] Moses Wetang'ula, EGH, MP

Minister for Foreign Affairs
of the Republic of Kenya

(*d*) Exchange of notes constituting an agreement between the United Nations and the Government of Bolivia concerning the Informal Pre-sessional Meeting of the Ninth Session of the United Nations Permanent Forum on Indigenous Issues, to be held in La Paz, Bolivia, from 17 to 20 March 2010. New York, 11 and 16 March 2010*

I

11 March 2010

Excellency,

1. I have the honour to refer to the arrangements concerning the "Informal Pre-sessional Meeting of the Ninth Session of the United Nations Permanent Forum on Indigenous Issues" (hereinafter referred to as "the Meeting"). The Meeting falls within the mandate of the Forum as stipulated in the Economic and Social Council's resolution 2000/22.

2. The Meeting is organized by the United Nations represented by the Department of Economic and Social Affairs (hereinafter referred to as "the United Nations") in cooperation with the Plurinational State of Bolivia (hereinafter referred to as "Bolivia"), and will be held in La Paz, Bolivia, on 17 to 20 March 2010.

3. The Meeting will focus on the preparation of programme of work of the ninth session of the United Nations Permanent Forum on Indigenous Issues (hereinafter referred to as "The Forum") in April 2010.

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

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

(*a*) Up to 16 experts of the Forum;

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

* Entered into force on 16 March 2010 by signature.

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

6. The Meeting will be conducted in English, French, Russian and Spanish.

7. The United Nations will be responsible for:

(*a*) The invitations of participants, as specified in paragraph 4;

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

(*c*) Substantive support during the Meeting.

8. Bolivia will be responsible for:

(*a*) The transportation of the Meeting participants from the airport to the hotel and from the hotel to the airport, as well as from the hotel to the meeting venue and from the meeting venue to the hotel;

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

(*c*) Meeting premises and facilities for the Meeting;

(*d*) The reproduction of the Meeting materials in English;

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

(*f*) Provision of interpretation services in the following languages of the Meeting: English, French, Russian and Spanish;

(*g*) Costs relating to travel and accommodation for the participants specified in paragraph 4;

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

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

(*b*) The participants invited by the United Nations shall enjoy the privileges and immunities accorded to experts on mission for the Untied Nations by Articles VI and VII of the Convention. Officials of the United Nations participating in or performing functions in connection with the Meeting shall enjoy the privileges and immunities provided under Articles V and VII of the Convention;

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

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

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

When applications are made four weeks before the opening of the Meeting, visas shall be granted not later than two weeks before the opening of the Meeting. If the application is made less than four weeks before the opening, visas shall be granted as speedily as possible, and not later than three days before the opening. Arrangements shall be made to ensure that visas for the duration of the Meeting are delivered at the airport of arrival to those who are unable to obtain them prior to their arrival. Exit permits, where required, shall be granted free of charge, as speedily as possible and in any case not later than three days before the closing of the Meeting.

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

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

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

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

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

11. Any dispute concerning the interpretation or implementation of this Agreement, except for a dispute subject to the appropriate provisions of the Convention that is regulated by Section 30 of the Convention, shall, unless the parties otherwise, agree, be resolved by negotiation or any other agreed mode of settlement. Any such dispute that is not settled by negotiation or any other agreed mode of settlement shall be submitted at the request of either party for a final decision to a tribunal of three arbitrators, one of whom shall be appointed by the Secretary-General of the United Nations, one by Bolivia 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 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.

12. I have the honor to propose that the present letter and your confirmation in writing of the above constitute an Agreement between the United Nations and the Plurinational State of Bolivia regarding the hosting of the Meeting. It shall remain in force for the duration of the Meeting and for such additional period as is necessary for the completion of its work and for the resolution of any matters arising out of the agreement.

Please accept, Excellency, the assurances of my highest consideration

[*Signed*] Sha Zukang

Under-Secretary-General

II

16 March 2010

Mr. Under-Secretary-General:

I have the honour to refer to your note DESA-10/02195 regarding the arrangements concerning the "Informal Presessional Meeting of the Ninth Session of the United Nations Permanent Forum on Indigenous Issues", that will take place from 19 to 22 March 2010, in La Paz, Bolivia within the mandate of the Forum as stipulated in the Economic and Social Council's Resolution 2000/22.

In this respect, I have the honour to confirm that your letter and the present written confirmation will constitute an agreement between the Plurinational State of Bolivia and the United Nations, regarding the hosting of the meeting. It shall remain in for the duration of the meeting.

I avail myself this opportunity to reiterate Mr. Under-Secretary-General the assurances of my highest consideration.

[*Signed*] Pablo Solon

Deputy Permanent Representative
Charge d'affaires a.i.

(*e*) Agreement between the United Nations and the Government of the Central African Republic on the Status of the United Nations Integrated Peacebuilding Office in the Central African Republic. Bangui, 7 May 2010[*] [**]

Definitions

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

(*a*) "BINUCA" means the United Nations Integrated Peacebuilding Office in the Central African Republic, established by the Secretary-General of the United Nations pursuant to the statement issued by the President of the Security Council on 7 April 2009 (S/PRST/2009/5).

(*b*) "Special Representative" means the Special Representative of the Secretary-General for the Central African Republic, appointed by the Secretary-General of the United Nations. Except in paragraph 6 (a) below, any mention of the Special Representative in this Agreement shall include any members of BINUCA to whom the Special Representative delegates specific responsibilities or authority. "Special Representative" shall also mean, including in paragraph 6 (a), any member of BINUCA whom the Secretary-General appoints as Chief of Office for BINUCA in the event of the death, illness or other form of incapacity of the Special Representative.

(*c*) "Member of BINUCA" means:

(i) The Special Representative of the Secretary-General of the United Nations;

[*] Translation from the French provided by the Secretariat. The French language version remains the sole authentic text of this agreement

[**] Entered into force on 7 May 2010, in accordance with paragraph 27.

(ii) United Nations staff assigned to BINUCA, including locally recruited staff;

(iii) United Nations Volunteers assigned to BINUCA; and

(iv) Other persons assigned to perform tasks for BINUCA, including military and police advisers.

(*d*) "Government" means the Government of the Central African Republic;

(*e*) "Territory" means the territory of the Central African Republic;

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

(*g*) "Contractors" means natural and legal persons and their employees and subcontractors, other than members of BINUCA, hired by the United Nations to offer services or provide supplies, fuel, equipment, materials and other assets in support of the activities of BINUCA. Such contractors shall not be considered third-party beneficiaries under the terms of this Agreement;

(*h*) "Vehicles" means the vehicles used by the United Nations and operated by members of BINUCA and contractors in support of the activities of BINUCA.

Application of this Agreement

2. Unless specifically provided otherwise, the provisions of this Agreement and any obligation undertaken by the Government or any privilege, immunity, facility or concession granted to BINUCA or any member thereof or to contractors shall apply throughout the territory of the Central African Republic.

Application of the Convention

3. BINUCA, its property, funds and assets, and its members, shall enjoy the privileges, immunities, exemptions and facilities set forth in this Agreement, as well as those provided for in the Convention.

Status of BINUCA

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

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

Status of members of BINUCA

6. The Government shall extend:

(*a*) to the Special Representative the privileges and immunities, exemptions and facilities accorded to diplomatic envoys, in accordance with international law. As such, he or she shall have the rank of Chief of Diplomatic Mission for the entire United Nations system in the Central African Republic and shall therefore have exclusive use of the vehicle

flag during official ceremonies; to the Deputy Special Representative the privileges and immunities, exemptions and facilities which are accorded to diplomatic envoys in accordance with international law. As such, he or she shall have the rank of Chief of Diplomatic Mission for the entire United Nations system in the Central African Republic and shall therefore have exclusive use of the vehicle flag during official ceremonies in the absence of the Special Representative; and to high-ranking members of BINUCA, whose names shall be communicated to the Government by the Special Representative, the privileges and immunities, exemptions and facilities accorded to by diplomatic envoys, in accordance with international law;

(*b*) to United Nations staff assigned to BINUCA, the privileges and immunities provided for under articles V and VII of the Convention. Locally recruited members of BINUCA shall enjoy the immunities concerning official acts and exemption from taxation and national service obligations provided for in section 18 (a), (b) and (c) of the Convention;

(*c*) to United Nations Volunteers assigned to BINUCA, the privileges and immunities of United Nations staff provided for under articles V and VII of the Convention. Locally recruited United Nations Volunteers shall enjoy the immunities of United Nations staff provided for in section 18 (a), (b) and (c) of the Convention;

(*d*) to other persons assigned to perform tasks for BINUCA, including military and police advisers, the privileges and immunities of United Nations staff provided for under article VI and Article VII, section 26, of the Convention; and

(*e*) to non-locally recruited contractors, repatriation facilities in time of crisis; exemption from taxes on the services, goods, supplies, fuel, equipment, spare parts and vehicles that they provide to BINUCA, including corporate, social security and similar taxes arising directly from the provision of such services or goods.

Privileges and immunities of BINUCA

7. The privileges and immunities necessary for the fulfillment of the functions of BINUCA shall also include:

(*a*) Unrestricted freedom of entry and exit without delay or hindrance of members of BINUCA, contractors and their property, supplies, fuel, equipment, spare parts and means of transport; prompt issuance by the Government, free of charge and without any restriction, of multiple entry visas for members of BINUCA; and prompt issuance by the Government, free of charge and without restriction, of any visa, permit or authorization required;

(*b*) Unrestricted freedom of movement throughout the country, without delay, of BINUCA, members of BINUCA and contractors, their property, supplies, fuel, equipment, spare parts and vehicles, including contractors' vehicles used solely for the provision of services to BINUCA. BINUCA, its members and contractors and their vehicles, including contractors' vehicles used solely for the provision of services to BINUCA, shall use roads and bridges without the payment of fees, tolls or taxes. They shall not, however, claim exemption from fees which are in fact charges for services rendered on the understanding that such charges for services rendered shall be calculated at the most favourable rates;

(*c*) The right of BINUCA and its contractors to import, free of duty or other restrictions, supplies, fuel, equipment, spare parts, means of transport and any other goods and

food, whether consumed or unconsumed, which are for the exclusive and official use of BINUCA;

(*d*) The right of BINUCA and its contractors to clear ex customs, free of duty or other restrictions, for supplies, fuel, equipment, spare parts, means of transport and any other goods and food, whether consumed or unconsumed, which are for the exclusive and official use of BINUCA;

(*e*) The right to re-export or otherwise dispose of all supplies and other usable equipment, spare parts and means of transport and all supplies and other goods and food, whether consumed or unconsumed, that have been imported or cleared ex customs and have not been transferred or otherwise ceded to the Government or to an entity designated by the Government, on terms and conditions to be agreed upon;

(*f*) Issuance by the Government, as soon as possible, of all permits, authorizations and licences required for the import, export or acquisition of supplies, fuel, equipment, spare parts, means of transport and other goods and food, whether consumed or unconsumed, used exclusively in support of BINUCA, even where they have been imported or purchased by contractors, without any restriction or administrative fees, costs, charges or taxes, including value added tax;

(*g*) Exemption of BINUCA vehicles from registration and certification regulations of the Central African Republic, on the understanding that these vehicles must be covered by liability insurance;

(*h*) Recognition by the Government, without payment of any tax or fee, of the validity of licences and other permits issued by the Special Representative to any member of BINUCA (including locally recruited staff) for the use of BINUCA vehicles or the exercise of any profession or work related to the operations of BINUCA, on the understanding that no permit to operate a vehicle shall be issued to anyone not already in possession of a valid permit of the type required;

(*i*) Without prejudice to the provisions of paragraphs 15 and 16 below, recognition by the Government, without payment of tax or fee, of the validity of a permit or other authorization issued by the Special Representative to any member of BINUCA for the use of arms or ammunition related to the operations of BINUCA;

(*j*) The right to fly the United Nations flag and affix identifying signs of the United Nations on BINUCA premises. BINUCA service vehicles shall bear a distinctive United Nations identification and the Government shall be notified thereof;

(*k*) The right to install and to operate radio sending or receiving stations and satellite communication systems to connect appropriate points within the territory with each other and with United Nations offices in other countries, and to exchange information by voice communication, fax and other electronic means using the United Nations global telecommunications network. The United Nations telecommunication services shall be operated in accordance with the International Telecommunication Convention and Regulations, and the frequencies on which such stations may be operated shall be decided upon in cooperation with the Government and shall be communicated by the United Nations to the International Frequency Registration Board;

(*l*) The right of BINUCA to make its own arrangements for the processing and transport of private mail addressed to or emanating from its members. The Government,

which shall be informed of the nature of such arrangements, shall not interfere with or apply censorship to the mail of BINUCA or its members.

8. The Government shall provide BINUCA, free of charge and in cooperation with the Office, such areas for headquarters and other premises as may be necessary for the conduct of its operational and administrative activities, including a residence for the Special Representative. Without prejudice to the fact that all such premises remain Ivorian territory, they shall be inviolable and subject to the exclusive control and authority of the United Nations. The Government shall guarantee free access to these premises. The premises, materials, furniture or equipment, as applicable, placed at the disposal of BINUCA and its members shall remain the property of the Government of the Central African Republic.

9. The Government undertakes to assist BINUCA as far as possible in obtaining or, where applicable, to make available water, electricity and other necessary facilities at the most favourable rate and, in the case of interruption or threatened interruption of service, to give as far as is within its powers the same priority to the needs of BINUCA as to essential government services. Payment shall be made by BINUCA on a tax-free basis. BINUCA shall be responsible for the maintenance and upkeep of facilities so provided.

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

11. The Government undertakes to assist BINUCA, to the extent possible, in procuring on the local market the supplies, fuel, equipment, materials and other goods and services required for its subsistence and for the conduct of its operations. With respect to supplies, fuel, equipment, materials and other goods and services purchased officially on the local market by BINUCA and its contractors for their exclusive use, the Government shall make the necessary administrative arrangements to exempt it from any excise duties or taxes included in the price. The Government shall exempt BINUCA and its contractors from general sales tax in respect of all official purchases of significance made on the local market. In making purchases on the local market, BINUCA shall, on the basis of observations made and information provided by the Government in that respect, avoid having any adverse effect on the local economy.

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

Safety of members of BINUCA

13. The Government shall ensure that the provisions of the Convention on the Safety of United Nations and Associated Personnel, adopted by the General Assembly of the United Nations on 9 December 1994, are applied in respect of BINUCA, its property and assets and its members. In particular:

(*a*) The Government shall take all appropriate measures to ensure the safety of BINUCA and its members. In particular, it shall take all appropriate steps to protect members of BINUCA, their equipment and their premises from any attack or action that would prevent them from discharging their mandate, without prejudice to the fact that the

premises of BINUCA are inviolable and subject to the exclusive control and authority of the United Nations;

(*b*) If members of the United Nations are captured or detained in the course of the performance of their duties and their identification has been established, they shall not be subjected to interrogation but shall be promptly released and returned to United Nations or other appropriate authorities. Pending their release such personnel shall be treated in accordance with universally recognized standards of human rights and the principles and spirit of the Geneva Conventions of 1949;

(*c*) The Government undertakes to punish the following crimes according to the Penal Code:

(i) The murder, kidnapping or other attack upon the person or liberty of any member of BINUCA;

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

(iii) The threat to commit any such attack with the objective of compelling a physical or juridical person to do or to refrain from doing any act;

(iv) The attempt to commit such an attack; and

(v) Any act constituting participation as an accomplice in any such attack, or in an attempt to commit such attack or in organizing or ordering others to commit such an attack.

(*d*) The Government shall establish its jurisdiction over the crimes set out in paragraph 13 (c) above:

(i) When the crime is committed in the territory of the Central African Republic;

(ii) When the alleged offender is a national of the Central African Republic;

(iii) When the alleged offender, other than a member of BINUCA, is present in the territory of the Central African Republic and is not extradited to the State where the crime was committed; or to the State of which the alleged offender is a national; or, if the alleged offender is a stateless person, to the State in which that person has his or her habitual residence; or to the State of which the victim is a national;

(*e*) The Government shall ensure the prosecution, without exception or delay, of persons accused of the crimes set out in paragraph 13 (c) above who are present in the territory of the Central African Republic and have not been extradited, and of persons under its criminal jurisdiction who are accused of other acts which affect BINUCA or its members and which, if they had been perpetrated against government forces or against the civilian population, would have given rise to criminal proceedings against the perpetrators.

14. The Government undertakes to provide to BINUCA, at the latter's request, maps and other information that may help ensure the safety of BINUCA in carrying out its tasks and in its movements. At the request of the Chief Liaison Officer, armed escorts shall be provided to protect members of BINUCA in the performance of their duties. To that end, the Government undertakes to designate a focal point to provide liaison with the BINUCA security services.

15. United Nations Security officers may wear the United Nations uniform. United Nations Security officers designated by the Special Representative may possess and carry arms while on duty in accordance with the regulations applicable to them. In so doing, they shall wear the United Nations uniform except in the situations set out in paragraph 16 below.

16. United Nations close protection specialists and United Nations Security Service officers assigned to close protection duty may possess and carry arms and wear civilian dress while on duty.

Jurisdiction

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

18. Should the Government consider that any member of BINUCA has committed a criminal offence, it shall promptly inform the Special Representative and submit to him or her any evidence available to it, subject to the provisions of paragraph 6 (a) above. The Special Representative shall conduct any necessary supplementary inquiry and then agree with the Government whether criminal proceedings should be instituted. Failing such agreement, the question shall be resolved as provided in paragraph 23 of this Agreement. If criminal proceedings are instituted pursuant to this Agreement, the courts and authorities of the Central African Republic shall ensure that the member of BINUCA in question is prosecuted and sentenced in accordance with the international standards of justice and due process set out in the International Covenant on Civil and Political Rights ("the Covenant"), to which the Central African Republic is a party, and that, in the event of a conviction, the death penalty is not imposed.

19. If civil proceedings are instituted against a member of BINUCA before a court of the Central African Republic, the Special Representative shall be notified immediately and shall inform the court whether the proceedings are related to the official duties of the member:

(*a*) If the Special Representative certifies that the proceedings are related to the official duties of the person concerned, the proceedings shall be discontinued and the provisions of paragraph 21 of this Agreement shall apply;

(*b*) If the Special Representative certifies that the proceedings are not related to the official duties of the person concerned, the proceedings shall continue. In that case, the courts and authorities of the Central African Republic shall ensure that the member of BINUCA in question has enough time to protect his or her interests in accordance with the international standards of due process and that the proceedings are conducted in accordance with the international standards of justice set out in the Covenant. If the Special Representative certifies that a member of BINUCA is unable because of official duties or authorized absence to protect his or her interests, the court shall, at the defendant's request, suspend the proceedings until the elimination of the disability, but for not more than 90 days. Property of a member of BINUCA that is certified by the Special Representative to be needed by the defendant for the fulfilment of his or her official duties shall be free from seizure for the satisfaction of a judgement, decision or order. The personal liberty of

a member of BINUCA shall not be restricted during civil proceedings, whether to enforce a judgement, decision or order, to compel an oath or for any other reason.

Death of members of BINUCA

20. The Special Representative or the Secretary-General of the United Nations shall have the right to take charge of and dispose of the body of a member of BINUCA who dies in the Central African Republic, as well as that member's personal property located therein, in accordance with United Nations procedures.

Settlement of disputes

21. Any third-party claim against BINUCA shall be considered by the United Nations, provided that the claim is made within six months of the occurrence of the event on which it is based, or, if the claimant did not and could not reasonably have known of the damage or loss, within six months of its discovery, and in no case more than one year after the termination of the mandate of BINUCA, on the understanding that under certain exceptional circumstances, the Secretary-General may decide that a request for compensation submitted after that date is admissible. Once its liability has been established, the United Nations shall pay compensation, subject to the financial limitations approved by the General Assembly in paragraphs 5 to 11 of its resolution 52/247 of 26 June 1998.

22. Any dispute concerning the terms of employment and conditions of service of locally recruited personnel shall be settled by the administrative procedures to be established by the Special Representative.

23. Any dispute between the United Nations and the Government concerning the interpretation or application of this Agreement shall be settled by negotiation or by some other form of settlement that has been agreed upon. Any dispute that cannot be settled by negotiation, or by another form of settlement that has been agreed upon, shall be referred, by one or other of the parties, to a court of arbitration composed of three members for a final decision; one arbitrator shall be appointed by the Secretary-General of the United Nations, another by the Government and the third, who shall preside over the court, by the other two arbitrators. If one party does not appoint an arbitrator within three months of receiving notification of the other party's appointment of an arbitrator, or if the two arbitrators appointed by the parties do not appoint a president within three months of the appointment of the second arbitrator, the third arbitrator shall be appointed, at the request of one or other of the parties to the dispute, by the President of the International Court of Justice. The court shall determine its own procedures and provide for the payment of its members, and its decisions shall require the approval of any two members. The court's judgments on procedural and substantive issues shall be final and, even in the absence of one of the parties, shall be binding on all the parties.

24. All differences between the United Nations and the Government concerning the interpretation or application of these provisions and involving a question of principle concerning the Convention shall be dealt with in accordance with the procedure provided for in section 30 of the Convention.

Supplemental arrangements

25. The Special Representative and the Government may conclude supplemental arrangements to this Agreement.

Miscellaneous provisions

26. The Government shall have the ultimate responsibility for the implementation and fulfilment of the privileges, immunities and rights granted to BINUCA under this agreement by the competent local authorities of the Central African Republic and for the facilities that the Central African Republic undertakes to provide to it in that regard.

27. This Agreement shall enter into force on the date on which it is signed.

28. This Agreement shall remain in force until the departure of the final element of BINUCA from the Central African Republic, except that:

(*a*) The provisions of paragraphs 17, 20, 23 and 24 above shall remain in force;

(*b*) The provisions of paragraph 21 above shall remain in force until all claims made prior to the expiration of this Agreement and submitted in accordance with the provisions of paragraph 20 above have been settled;

(*c*) The provisions of paragraph 13 (b) above shall remain in force until any member of BINUCA who has been captured, detained or taken hostage in the course of the performance of his or her duties, as mentioned in that paragraph, has been released and returned to the United Nations; and

(*d*) The provisions of paragraph 13 (e) shall remain in force until the proceedings mentioned in that paragraph have been concluded.

Done at Bangui on 7 May 2010, in duplicate in the French language.

For the United Nations:	For the Government of the Central African Republic:
[*Signed*] Sahle-Work Zewde	[*Signed*] H.E. Lieutenant General Antoine Gambi
Special Representative of the Secretary-General	Minister for Foreign Affairs, Regional Integration and Francophonie

(*f*) Exchange of letters constituting an agreement between the United Nations and the Government of Finland regarding the arrangements concerning the High-level Symposium in preparation of the 2010 Development Cooperation Forum (DCF), focusing on "Coherent Development Cooperation: Maximizing Impact in a Changing Environment", which will be held in Helsinki, Finland, from 3 to 4 June 2010. New York, 27 May 2010 and Helsinki, 31 May 2010*

I

27 May 2010

Excellency,

* Entered into force on 31 May 2010, in accordance with the provisions of the letters.

I have the honour to refer to the arrangements concerning the High-level Symposium in preparation of the 2010 Development Cooperation Forum (DCF), focusing on "Coherent Development Cooperation: Maximizing Impact in a Changing Environment" (hereinafter referred to as "the Meeting").

The Meeting, organized by the United Nations, represented by the Department of Economic and Social Affairs (hereinafter referred to as "the United Nations") in cooperation with the Government of Finland, represented by the Ministry for Foreign Affairs (hereinafter referred to as "the Government") will be held in Helsinki, Finland from 3 to 4 June 2010.

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

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

a) 70 to 120 representatives from governments, UN system organizations and other multilateral institutions, civil society, parliamentarians, local governments and the private sector invited jointly by the United Nations and the Government;

b) 5 officials from the United Nations; and

c) Other participants invited as observers by the Government and the United Nations.

2. The total number of participants will be up to 140. The list of participants will be determined by the United Nations in consultation with the Government prior to the holding of the Meeting.

3. The Meeting will be conducted in English and French.

4. The United Nations will be responsible for:

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

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

c) substantive support during the Meeting; and

d) issuance of round trip air tickets and payment of terminal expenses and daily subsistence allowance in accordance with the prevailing United Nations rates for the 5 United Nations officials mentioned in sub-paragraph 1(*b*) and 35 of the participants as specified in sub-paragraph (a).

5. The Government will provide a contribution of 223,740 USD, inclusive of the United Nations standard programme support costs, to finance the transportation, terminal expenses, and daily subsistence allowance in accordance with prevailing United Nations rates for 35 of the participants as specified in sub-paragraph (a) from developing countries and of 5 officials from the United Nations as specified in sub-paragraph 1(b) as agreed between the Government and the United Nations. The aforesaid contribution shall be administered in accordance with the United Nations Financial Regulations and Rules.

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

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

b) meeting premises and facilities for the Meeting as well as interpretation in English and French;

c) the reproduction of the Meeting materials in English;

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

e) any necessary communications facilities.

7. The cost of transportation and daily subsistence allowance for observers specified in sub-paragraph 1(c) above will be the responsibility of their respective organizations.

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

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

b) Without prejudice to the provisions of the Conventions referred to in subparagraph 8(*a*), all participants and persons performing functions in connection with the Meeting shall enjoy such additional facilities and courtesies as are necessary for the independent exercise of their functions in connection with the Meeting;

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

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

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

9. The Government shall, at its expense, provide such arrangements as may be required to ensure the safety of the participants and the effective functioning of the Meeting with appropriate security and free from any interference of any kind. While such arrangements shall be under the direct supervision and control of a senior officer provided by the Government, this officer shall work in close co-operation with a designated senior official of the United Nations.

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

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

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

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

The foregoing provision shall not apply where the United Nations and the Government are agreed that an action, claim or other demand arises from the gross negligence or willful misconduct of the United Nations or its personnel.

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

12. I further propose that upon receipt of your Government's confirmation in writing of the above, this exchange of letters shall constitute an Agreement between the United Nations and the Government of Finland regarding the hosting of the High-level Symposia in preparation of the 2010 Development Cooperation Forum (DCF) on "Coherent Development Cooperation: Maximizing Impact in a Changing Environment", which shall enter into force on the date of your reply and shall remain in force for the duration of the Meeting and for such additional period as is necessary for its preparation, 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

May 31, 2010

Excellency,

I have the honour to refer to your letter of 27 May 2010 regarding the arrangements concerning the High-level Symposium in preparation of the 2010 Development Cooperation Forum (DCF), focusing on "Coherent Development Cooperation: Maximizing Impact in a Changing Environment", which will be held in Helsinki from 3 to 4 June 2010.

This exchange of letters will constitute an Agreement between the United Nations and the Government of Finland.

In order to proceed with the payment I kindly ask you to include a disbursement request detailing transfer and banking instructions.

Yours sincerely,

[*Signed*] Jorma Julin

Director General
Ministry for Foreign Affairs of Finland
Department for Development Policy

(*g*) Memorandum of Understanding between the United Nations and the Republic of Uganda concerning the use of facilities at Entebbe by the United Nations. New York, 20 July 2010*

Whereas on 8 August 2003, the United Nations and the Government of the Republic of Uganda (hereinafter "the Government") concluded the "Memorandum of Understanding between the United Nations and the Government of the Republic of Uganda concerning the activities of the United Nations Organization Mission in the Democratic Republic of the Congo in Uganda" (hereinafter the "MONUC MOU");

Whereas on 27 January 2006, the United Nations and the Government of the Republic of Uganda concluded the "Memorandum of Understanding between the United Nations and the Government of the Republic of Uganda concerning the activities of the United Nations Mission in Sudan in the Republic of Uganda" (hereinafter the "UNMIS MOU");

Whereas pursuant to its Article VII, entitled "Final Provisions", the MONUC MOU may be modified by written agreement between the United Nations and the Government, and shall remain in force for the duration of MONUC's mandate and for such a period thereafter as is necessary for all matters relating to any of the provisions to be settled;

Whereas pursuant to its Article VII, entitled "Final Provisions", the UNMIS MOU may be modified by written agreement between the United Nations and the Government, and shall remain in force until the departure of the final element of UNMIS from Sudan, save for its Article I, paragraph 2, which shall remain in force, and its Article V which shall remain in force until any and all claims falling within the scope of that Article have been settled;

* Entered into force on 20 July 2010, in accordance with article XXIX.

Whereas pursuant to Article II of the MOU, the Government has provided to the United Nations certain areas and sites for premises in Entebbe, which have been used as a logistics hub in support and peacekeeping operations in the region;

Whereas in operative paragraph 14 of its resolution 62/256 dated 22 July 2008, on the Financing of the United Nations Organization Mission in the Democratic Republic of the Congo, the General Assembly of the United Nations "*Notes* that there has been cooperation among the missions to explore new avenues for achieving greater synergies in the use of the resources of the Organization, including the concept of a regional support base in Entebbe for the United Nations Organization Mission in the Democratic Republic of the Congo, the United Nations Integrated Office in Burundi and the United Nations Mission in the Sudan, bearing in mind that individual missions are responsible for the preparation and implementation of their own budgets and for controlling their assets and logistical operations;

Whereas in its resolutions 63/273 B dated 23 July 2009, 63/289 dated 4 August 2009, and 63/291 also dated 4 August 2009, related to the financing of the United Nations Mission in Sudan, the United Nations Mission in Cote d'lvoire and the United Nations Organization Mission in the Democratic Republic of Congo respectively, the General Assembly "*Acknowledges with appreciation* that the use of the logistics hub at Entebbe, Uganda, has been cost-effective and has resulted in savings for the United Nations, and welcomes the expansion of the logistics hub to provide logistical support to peacekeeping operations in the region and to contribute further to their enhanced efficiency and responsiveness, taking into account the ongoing efforts in this regard";

Whereas the United Nations and the Government of the Republic of Uganda wish to enhance their cooperation and to consolidate the expansion of the United Nations logistics hub at Entebbe, and to that end, the Government wishes to provide additional areas and sites for premises as described below;

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

Article I. Definitions

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

(*a*) "Uganda" means the Republic of Uganda;

(*b*) "the United Nations" means the international organization established under the Charter of the United Nations signed at San Francisco, United States of America, on 24 October 1945;

(*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 Uganda is a party;

(*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 Uganda as may be appropriate in the context and in accordance with the laws and customs applicable in Uganda;

(*f*) the "Premises" means any land, buildings, structures, and related facilities utilized exclusively by the United Nations in Uganda;

(*g*) the "head of premises" means the United Nations official designated to lead the activities conducted in the Premises;

(*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 MONUC or other peacekeeping operations in the region;

(*i*) "officials" are officials of the United Nations within the meaning of Article V of the Convention and as defined in General Assembly resolution 76 (I) dated 7 December 1946;

(*j*) "experts on mission" means persons, other than officials, as referred to in Article VI of the Convention;

(*k*) "nationally recruited staff" means staff having Ugandan nationality or having permanent residency status in Uganda who are recruited in Uganda to work within the Premises, as well as such small number of nationals of neighbouring countries or having residency in such countries whom the Government of Uganda has authorized to be locally employed;

(*l*) "United Nations contractual personnel" refers to individuals who, although not holding an employment contract pursuant to the United Nations Staff Regulations and Rules, have been provided by a third party under contract with the United Nations to perform services for the United Nations within the Premises;

(*m*) "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 25 years of age who are in full-time education and economically dependent, or children of any age who are dependent due to disability;

(*n*) "United Nations personnel" means officials, experts on mission (who shall include any military observers, military liaison officers and military staff officers), military contingent personnel and locally employed personnel who are assigned to hourly rates;

(*o*) "Agreement" means this Memorandum of Understanding;

(*p*) "Parties" means the Republic of Uganda and the United Nations.

Article II. Scope and purpose of this Agreement

1. This Agreement elaborates on and complements the provisions of the aforementioned MONUC MOU and UNMIS MOU, as provided below.

2. The aforementioned MONUC MOU shall apply *mutatis mutandis* to the activities of such other United Nations peace operations in the region as may be agreed upon by the United Nations and the Government. The provisions of the present Agreement shall equally apply to MONUC and to such peace operations.

Article III. 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. The property, funds and assets of contributing States used in connection with peacekeeping operations in the region shall be deemed to be United Nations property, funds and assets, to which Article II, sections 2 and 7 of the Convention shall accordingly apply.

Article IV. Premises

1. The Government of Uganda shall assist the United Nations in obtaining or retaining for as long as is required such areas and sites for premises or for the construction of premises as may be necessary for the conduct of the operational and administrative activities of the United Nations in Uganda. Without prejudice to the fact that all such premises and sites remain Ugandan territory, they shall be inviolable and subject to the exclusive control and authority of the United Nations.

2. The premises which the Government agrees to provide to the United Nations shall include:

(*a*) The current base consisting of 125,000 square meters, located at the northern end of the Entebbe International Airport, running parallel to the Entebbe-Kampala road, edged brown in the attached map;*

(*b*) The facility extension consisting of 27,000 square meters, at the north eastern edge of the current facility and adjacent to the Entebbe-Kampala road, edged blue in the attached map;

(*c*) The area within the airport compound located at the southern end of the airport compound and adjacent to the second runway, consisting of 78,000 square meters, edged red in the attached map;

(*d*) The area adjacent to the current facility on the western side, and adjacent to the airport perimeter consisting of 750,000 square meters, edged yellow in the attached map.

3. The above areas shall be made available for the exclusive use of the United Nations at no cost and shall be clearly physically delimited on the ground. These areas may be enlarged under mutually agreeable terms between the Government of Uganda and MONUC, without amending this document.

4. As long as the Agreement remains in force, the United Nations shall have the right to use and occupy the Premises as a UN Base for a minimum of twenty (20) years from the date of signature of this Agreement. If Uganda requests the United Nations to vacate the Premises, or to relocate the UN Base from the Premises, after the period of twenty (20) years from the date of signature of this Agreement, and through providing 36 months prior notice, such vacation or relocation shall be subject to the provision by Uganda to the United Nations, without charge, of equivalent premises, buildings and related facilities in a suitable alternative location in Uganda acceptable to the United Nations for use by the United Nations as a UN Base. The provision of such alternate premises, buildings and related facilities shall be governed by the terms and conditions of the Agreement. Uganda

* Not reproduced herein.

shall also be responsible for all costs incurred by the United Nations in connection with such relocation.

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

Article V. Recruitment of local personnel

The United Nations may recruit locally such personnel as it requires. Upon the request of the Head of Premises the Government undertakes to facilitate the recruitment of qualified local staff for the Premises and to accelerate the process of such recruitment. In order to meet the requirement of the Premises for local staff with particular skills and experience in certain technical fields, the Government shall place no obstacle to the employment of nationals or permanent residents of States in the region as locally recruited personnel.

Article VI. Inviolability of Premises

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

2. No officer of Uganda, or other person exercising any public authority in Uganda, shall enter the Premises to perform any duties therein except with the consent of, and under conditions approved by the Head of Premises. Consent to such entry shall be presumed in the event of fire or other analogous emergency requiring urgent action if the Head of 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, MONUC 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 below.

2. Uganda 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, includ-

ing value added tax. Uganda 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 the least possible delay, and consistent with Article 1, paragraph 3 (v) of the MONUC MOU, 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 its international 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 its international personnel, and shall give sympathetic consideration to observations or requests from the appropriate authorities concerning the operation of the commissary.

5. MONUC shall be entitled to establish and maintain its own catering facilities on the Premises.

6. The United Nations shall have the right to dispose of any goods it deems excess to its requirements by sale within Uganda at any time after their importation or acquisition, subject to the Government regulations concerning payment by the buyer of customs duties and other levies.

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, required for official use in Uganda or in support of other Peacekeeping and related operations, whether such vehicles be imported or purchased in Uganda. Such vehicles shall be registered in accordance with applicable United Nations regulations. The United Nations may dispose freely of such vehicles two years after their importation, without any prohibition, restriction, customs duties or other levies provided a buyer who is not tax-exempt shall pay the required taxes. Notwithstanding the preceding, such vehicles may be disposed of at an earlier date, subject to authorization by the appropriate Ugandan authorities.

(c) Fuel and lubricants, for United Nations' official use and activities, may be imported, exported or purchased in Uganda 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 Uganda, or otherwise imported into Uganda for the official and exclusive use of the United Nations, Uganda 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. United Nations military and police personnel may also display their Country flag and emblems on their 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. United Nations vehicles will carry distinctive United Nations-issued registration plates.

3. United Nations military personnel, United Nations civilian police personnel and United Nations security officers may wear their uniforms and standard United Nations accoutrements while on official travel through Uganda.

Article X. Public services and facilities

1. The appropriate authorities shall make adequate arrangements to ensure availability to and access by the United Nations, on fair conditions and upon request of the United Nations, to the public services needed by the Premises such as, but not limited to, postal, telecommunications 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 Uganda.

3. In the case of interruption or threatened interruption of service, Uganda 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. Telecommunications

1. The United Nations shall enjoy the facilities in respect of telecommunications provided in Article III of the Convention. Issues with respect to telecommunications 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 Uganda 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 Uganda, the right to unrestricted communications by radio (including, but not limited to satellite, microwave, mobile and hand-held radios), 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 Ugandan 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 Uganda to another country or within Uganda and to convert any currency held by it into any other currency.

2. In exercising its rights under the above provision, MONUC shall pay due regard to any representations made by Uganda 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. Uganda shall take effective and adequate action as may be required to ensure the security, safety and protection of United Nations personnel in Uganda and visitors at the Premises in Uganda. Uganda shall ensure that the provisions of the Convention on the Safety of United Nations and Associated Personnel, to which Uganda 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. Upon request of the Head of Premises, armed escorts shall be provided to protect United Nations personnel during the exercise of their duties.

3. Uganda shall ensure the security and protection of the Premises and shall exercise due diligence to ensure that the tranquility 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.

4. If so requested by the Head of 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.

5. Uganda 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 Uganda.

6. MONUC shall consult with Uganda 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 Uganda. The internal security of the Premises shall be the responsibility of MONUC.

7. United Nations military personnel, UN civilian police personnel and United Nations security officers designated by the head of the premises may possess, transport and carry arms and ammunition while on duty in accordance with their orders. When doing so, they must wear the United Nations uniform, except when serving as close protection officers.

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 Uganda. 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 Uganda, be coordinated with the appropriate Ugandan Officials. Uganda 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 Uganda to state vessels and aircraft. MONUC may, in agreement with the Government improve designated roads, bridges, canals and other waters, port facilities and airfields.

3. Uganda 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, provided that the United Nations will not claim exemption from charges which are in fact public utility charges for services rendered.

Article XV. Permits and licenses

1. Uganda 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 of personnel

1. United Nations officials other than national recruited staff shall enjoy in Uganda 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 search and 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 Uganda;

(*e*) Exemption from inheritance and gift taxes, except with respect to immovable property located in Uganda, 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 Uganda;

(*f*) Exemption from registration fees in respect of their automobiles, vehicle tax as well as special tax on fuel;

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

(*h*) Exemption, for themselves and for members of the family forming part of the household, from immigration restrictions and alien registration;

(*i*) 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 Uganda;

(*j*) 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;

(*k*) 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.

(*l*) 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 Uganda, which scheme shall be no less favourable than that accorded to diplomatic missions, consular offices and international organizations in Uganda. Automobiles imported under the provisions of this Article may be sold in Uganda in accordance with the said scheme of exemptions referred to above. Officials shall also be entitled, on the termination of their official functions in Uganda, to export their furniture and personal effects, including automobiles, without duties, taxes, levies and restrictions.

2. The Government shall also accord to military personnel of national military contingents the privileges and immunities set forth in paragraph 1 above. In addition, such personnel shall be accorded immunity from every form of legal process in respect of all criminal offences they may commit in Uganda. With respect to such criminal offences, the members of the military component shall be subject to the exclusive jurisdiction of their contributing States.

3. In addition to the privileges and immunities set forth under paragraph 1 above, officials having the professional grade of P-5 and above shall be accorded the same privileges, immunities, exemptions and facilities accorded by Uganda to members of comparable rank of the diplomatic corps in Uganda.

4. Members of the family forming part of the household of officials shall be entitled to take up gainful employment in Uganda for the duration of the officials' assignment in Uganda. The request of authorization to take up a particular gainful employment in Uganda shall be addressed by the Head of Premises to the appropriate Ugandan Ministry. The privileges and immunities set forth in this Agreement shall not apply with respect to such employment.

5. Officials of Ugandan nationality or with permanent resident status in Uganda shall enjoy only those privileges and immunities, exemptions and facilities referred to in Article V, Section 18 (a), (b) and (c) of the Convention.

5.[*Sic*] Experts on mission shall be granted visas or entry permits as promptly as possible and without charge for the duration of their mission with the United Nations.

6. The Government shall use its best endeavours to ensure that United Nations personnel assigned to the Premises have access to residential accommodation in Uganda.

7. United Nations contractors, other than local contractors, shall be accorded repatriation facilities in time of crises and exemption from taxes in Uganda on the services

provided to the United Nations, including corporate, income, social security and other similar taxes arising directly from the provision of such services.

Article XVII. Head of premises

1. Without prejudice to the provisions of the above Articles and unless otherwise agreed by the Parties, the Head of Premises shall enjoy, during his/her residence in Uganda, the privileges and immunities and facilities granted to heads of diplomatic missions accredited to Uganda. The name of the Head of Premises shall be included in the diplomatic list.

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 Ugandan nationality or with permanent resident status in Uganda, 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. Personnel recruited locally and 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 after termination of their employment with the United Nations. They shall also be accorded such other facilities as may be necessary for the independent exercise of their official functions. The terms of their employment shall be in accordance with the relevant United Nations resolutions, decisions, regulations, rules and policies.

Article XX. Waiver of immunity

1. Privileges and immunities referred to in the above Articles 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 Uganda. The Head 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 Head of Premises and the appropriate authorities. Following the investigation of such accident or incident, the Head of Premises shall be consulted by the appropriate authorities 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 Ugandan courts.

Article XXIII. Entry, residence and departure

1. The Head of 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 Uganda during the period of their assignment in Uganda. Uganda undertakes to facilitate their entry into and departure from Uganda without charge and as promptly as possible.

2. The bearers of a United Nations Laissez-Passer shall not be required to obtain entry visas or any other type of entry permit.

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, functional 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.

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 Uganda during their employment with the United Nations.

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 Uganda 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 Uganda 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. Uganda shall cooperate with 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 Uganda 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, Uganda 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 sixty (60) 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. This Agreement, and any amendment thereto, shall enter into force upon signature. If, following signature of this Agreement, the Parties need to undertake internal procedures for this Agreement to enter into force, then the provisions of this Agreement shall be applied provisionally as from the date of signature pending the completion of such internal procedures.

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

Done at New York on this 20th day of July 2010.

For the United Nations:	For the Government of Uganda:
[*Signed*] Susana Malcorra	[*Signed*] Ruhakana Rugunda
Under-Secretary-General Department of Field Support	Permanent Representative of the Republic of Uganda to the United Nations
United Nations	

(*h*) Agreement between the United Nations and Guinea-Bissau concerning the status of the United Nations Integrated Peacebuilding Office in Guinea-Bissau. Bissau, 22 November 2010*

I. Definitions

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

(*a*) "UNIOGBIS" means the United Nations Integrated Peacebuilding Office in Guinea-Bissau, established in accordance with Security Council resolution 1876 (2009) of 26 June 2009.

(*b*) "Special Representative" means the Special Representative for Guinea-Bissau appointed by the Secretary-General of the United Nations. Any reference to the Special Representative in this Agreement shall, except in paragraph 24, include any member of UNIOGBIS to whom he or she delegates a specified function or authority. It shall also include, including in paragraph 24, any member of UNIOGBIS whom the Secretary-Gen-

* Entered into force on 22 November 2010 by signature, in accordance with paragraph 61.

eral may designate as acting Head of Office of UNIOGBIS following the death or resignation of the Special Representative;

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

(i) the Special Representative;

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

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

(iv) other persons assigned to perform missions for UNIOGBIS, including United Nations civilian police;

(*d*) "the Government" means the Government of Guinea-Bissau;

(*e*) "the territory" means the territory of Guinea-Bissau;

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

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

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

(*i*) "aircraft" means aircraft in use by the United Nations or contractors in support of UNIOGBIS activities;

(*j*) "vessels" means vessels in use by the United Nations and operated by members of UNIOGBIS or contractors in support of UNIOGBIS activities.

II. Application of the present Agreement

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

III. Application of the Convention

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

IV. Status of UNIOGBIS

4. UNIOGBIS and its members shall refrain from any action or activity incompatible with the impartial and international nature of their duties or inconsistent with the spirit of the present Agreement. UNIOGBIS and its members shall respect all local laws and

regulations. The Special Representative shall take all appropriate measures to ensure the observance of these obligations.

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

United Nations flag, markings and identification

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

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

Communications

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

9. Subject to the provisions of paragraph 8:

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

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

and electronic data systems may be made only after consultation and in accordance with arrangements made with the Government. Use of those local systems by UNIOGBIS shall be charged at the most favourable rate.

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

Travel and transport

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

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

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

Privileges and immunities of UNIOGBIS

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

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

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

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

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

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

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

V. Facilities for UNIOGBIS and its contractors

Premises required for conducting the operational and administrative activities of UNIOGBIS

14. The Government shall provide, without cost to UNIOGBIS, in agreement with the Special Representative and for as long as may be required, such areas for headquarters and other premises as may be necessary for the conduct of the operational and administrative activities of UNIOGBIS, including the establishment of the necessary facilities for maintaining communications in accordance with paragraph 9. Without prejudice to the fact that all such premises remain territory of Guinea-Bissau, they shall be inviolable and subject to the exclusive control and authority of the United Nations. The Government shall guarantee unimpeded access to such United Nations premises.

15. The Government undertakes to assist UNIOGBIS in obtaining and making available, where applicable, water, sewerage, electricity and other facilities free of charge, or, where this is not possible, at the most favourable rate, and free of all fees, duties and taxes, including value-added tax. Where such utilities or facilities are not provided free of charge, payment shall be made by UNIOGBIS on terms to be agreed with the competent authority.

UNIOGBIS shall be responsible for the maintenance and upkeep of facilities so provided. In the event of interruption or threatened interruption of service, the Government undertakes to give, as far as is within its powers, the same priority to the needs of UNIOGBIS as to essential government services.

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

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

Provisions, supplies and services, and sanitary arrangements

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

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

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

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

Recruitment of local personnel

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

Currency

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

VI. Status of the Members of UNIOGBIS

Privileges and immunities

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

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

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

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

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

29. Members of UNIOGBIS, including locally recruited personnel (but with the exception of those assigned to hourly rates), shall be exempt from taxation on the pay and emoluments received from the United Nations. Members of UNIOGBIS other than locally recruited personnel shall also be exempt from taxation on any income received from outside Guinea-Bissau, as well as from all other direct taxes, except municipal rates for services enjoyed, and from all registration fees and charges.

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

31. The Special Representative shall cooperate with the Government and shall render all assistance within his power in ensuring the observance of the customs and fiscal laws and regulations of Guinea-Bissau by members of UNIOGBIS, in accordance with the present Agreement.

Entry, residence and departure

32. The Special Representative and members of UNIOGBIS shall, whenever so required by the Special Representative, have the right to enter into, reside in and depart from Guinea-Bissau.

33. The Government undertakes to facilitate the entry into and departure from Guinea-Bissau, without delay or hindrance, of the Special Representative and members of UNIOGBIS and shall be kept informed of such movement. For that purpose, the Special Representative and members of UNIOGBIS shall be exempt from passport and visa regulations and immigration inspection and restrictions, as well as from payment of any taxes, fees or charges on entering into or departing from Guinea-Bissau. They shall, however, complete and submit arrival and departure cards. They shall also be exempt from any regulations governing the residence of aliens in Guinea-Bissau, including registration, but shall not be considered as acquiring any right to permanent residence or domicile in Guinea-Bissau.

34. For the purpose of such entry or departure, members of UNIOGBIS shall only be required to have a personal numbered Identity card issued in accordance with paragraph 35 of the present Agreement, except in the case of first entry into Guinea-Bissau, when the United Nations laissez-passer, national passport or personal identity card issued by the United Nations shall be accepted in lieu of the said identity card.

Identification

35. The Special Representative shall issue to each member of UNIOGBIS before or as soon as possible after such member's first entry into Guinea-Bissau, as well as to all locally recruited personnel and to UNIOGBIS' contractors, a numbered identity card, showing the bearer's name and photograph. Except as provided for in paragraph 34 of the present Agreement, such identity card shall be the only document required of a member of UNIOGBIS.

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

Uniforms and arms

37. United Nations civilian police shall wear, while performing official duties, the national police uniform of their respective States with standard United Nations accoutrements. United Nations Security Officers may wear the United Nations uniform. United Nations civilian police and Security Officers may possess and carry firearms and ammunition while on official duty in accordance with their orders. When doing so, United Nations Security Officers must wear the United Nations uniform, except as otherwise provided in paragraph 38.

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

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

Permits and licenses

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

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

42. Without prejudice to the provisions of paragraphs 37 and 38, the Government further agrees to accept as valid, without tax or fee, permits or licenses issued by the Special Representative to members of UNIOGBIS for the carrying or use of firearms or ammunition in connection with the functioning of UNIOGBIS.

Arrest and transfer of custody and mutual assistance

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

44. The personnel mentioned in paragraph 43 above may take into custody any other person on the premises of UNIOGBIS. Such other person shall be delivered immediately to the nearest appropriate official of the Government for the purpose of dealing with any offence or disturbance on such premises.

45. Subject to the provision of paragraphs 24 and 27, officials of the Government may take into custody any member of UNIOGBIS:

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

(*b*) When such a member of UNIOGBIS is apprehended in the commission or attempted commission of a criminal offence. Such person shall be delivered immediately, together with any item seized, to the nearest appropriate representative of UNIOGBIS, whereafter the provisions of paragraph 51 shall apply *mutatis mutandis*.

46. When a person is taken into custody under paragraph 44 or paragraph 45 (b), UNIOGBIS or the Government, as this case may be, may make a preliminary interrogation, but may not delay the transfer of custody. Following such transfer, the person concerned shall be made available upon request to the arresting authority for further interrogation.

47. UNIOGBIS and the Government shall assist each other in carrying out all necessary investigations into offences in respect of which either or both have an interest, in the production of witnesses and in the collection and production of evidence, including the seizure of and, if appropriate, the handing over of items connected with an offence. The handing over of any such items may be made subject to their return on the terms specified by the authority delivering them. Each party shall notify the other of the disposition of any case in the outcome of which the other may have an Interest or in which there has been a transfer of custody under the provisions of paragraphs 44 to 46.

Safety and security

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

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

(*ii*) except as otherwise provided in paragraph 45, if members of UNIOGBIS or its associated personnel are captured, detained or taken hostage in the course of the performance of their duties and their identification has been established, they shall not be subjected to interrogation and they shall be promptly released and returned to United Nations or other appropriate authorities. Pending their release such personnel shall be treated in accordance with universally recognized standards of human rights and the principles and spirit of the Geneva Conventions of 1949;

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

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

b) a violent attack upon the official premises, the private accommodation or the means of transportation of any member of UNIOGBIS or its associated personnel likely to endanger his or her person or liberty;

c) a threat to commit any such attack with the objective of compelling a physical or juridical person to do or to refrain from doing any act;

d) an attempt to commit any such attack; and

e) an act constituting participation as an accomplice in any such attack, or in an attempt to commit such attack, or in organizing or ordering others to commit such attack;

(*iv*) the Government confirms that it has established its jurisdiction over the crimes set out in subparagraph (iii): (a) when the crime is committed on the territory of Guinea-Bissau; (b) when the alleged offender is a national of Guinea-Bissau; (c) when the alleged offender, other than a member of UNIOGBIS, is present in the territory of Guinea-Bissau;

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

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

Jurisdiction

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

51. Should the Government consider that any member of UNIOGBIS has committed a criminal offence, it shall promptly inform the Special Representative and present to him or her any evidence available to it. Subject to the provisions of paragraph 24, the Special Representative shall conduct any necessary supplementary inquiry and then agree with the Government whether or not criminal proceedings should be instituted. Failing such agreement the question shall be resolved as provided in paragraph 57 of the present Agreement. In the event that criminal proceedings are instituted in accordance with the present Agreement, the courts and authorities of Guinea-Bissau shall ensure that the member of UNIOGBIS concerned is prosecuted, brought to trial and tried in accordance with inter-

national standards of justice, fairness and due process of law, as set out in the International Covenant on Civil and Political Rights (the "Covenant"), to which Guinea-Bissau is a Party. The Government confirms that, in accordance with the Second Optional Protocol to the Covenant, to which Guinea-Bissau is a Party, the death penalty has been abolished in Guinea-Bissau and that accordingly no sentence of death will be imposed in the event of a guilty verdict.

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

(*a*) If the Special Representative certifies that the proceeding is related to official duties, such proceeding shall be discontinued and the provisions of paragraph 55 of the present Agreement shall apply.

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

Deceased members

53. The Special Representative or the Secretary-General of the United Nations shall have the right to take charge of and dispose of the body of a member of UNIOGBIS who dies in Guinea-Bissau, as well as that member's personal property located within Guinea-Bissau, in accordance with United Nations procedures.

VII. Limitation of liability of the United Nations

54. Third party claims for property loss or damage and for personal injury, illness or death arising from or directly attributed to UNIOGBIS and which cannot be settled through the internal procedures of the United Nations shall be settled by the United Nations in the manner provided for in paragraph 55 of the present Agreement, provided that the claim is submitted within six months following the occurrence of the loss, damage or injury or, if the claimant did not know or could not reasonably have known of such loss or injury, within six months from the time he or she had discovered the loss or injury, but in any event not later than one year after the termination of the mandate of the operation. Upon determination of liability as provided in this Agreement the United Nations shall

pay compensation within such financial limitations as have been approved by the General Assembly in its resolution 52/247 of 26 June 1998.

VIII. Settlement of disputes

55. Except as provided in paragraph 57, any dispute or claim of a private law character to which UNIOGBIS or any member thereof is a party and over which the courts of Guinea-Bissau do not have jurisdiction because of any provision of the present Agreement shall be settled by a standing claims commission to be established for that purpose. One member of the commission shall be appointed by the Secretary-General of the United Nations, one member by the Government and a chairman jointly by the Secretary-General and the Government. If no agreement as to the chairman is reached within thirty days of the appointment of the first member of the commission, the President of the International Court of Justice may, at the request of either the Secretary-General of the United Nations or the Government, appoint the chairman. Any vacancy on the commission shall be filled by the same method prescribed for the original appointment, provided that the thirty-day period there prescribed shall start as soon as there is a vacancy in the chairmanship. The commission shall determine its own procedures, provided that any two members shall constitute a quorum for all purposes (except for a period of thirty days after the creation of a vacancy) and all decisions shall require the approval of any two members. The awards of the commission shall be final. The awards of the commission shall be notified to the parties and, if against a member of UNIOGBIS, the Special Representative or the Secretary-General of the United Nations shall use his or her best endeavours to ensure compliance.

56. Disputes concerning the terms of employment and conditions of service of locally recruited personnel shall be settled by the administrative procedures to be established by the Special Representative.

57. All other disputes between UNIOGBIS and the Government concerning the interpretation or application of the present Agreement that are not settled by negotiation shall, unless otherwise agreed by the parties, be submitted to a tribunal of three arbitrators. The provisions relating to the establishment and procedures of the claims commission set out in paragraph 55 shall apply, *mutatis mutandis,* to the establishment and procedures of the tribunal. The decisions of the tribunal shall be final and binding on both parties.

IX. Supplemental arrangements

58. The Special Representative and the Government may conclude supplemental arrangements to the present Agreement.

X. Liaison

59. The Special Representative and the Government shall take appropriate measures to ensure close and reciprocal liaison at every appropriate level. The Ministry of Foreign Affairs of the Government of Guinea-Bissau shall act as the main liaison agency for this purpose on the part of the Government

XI. Miscellaneous provisions

60. Wherever the present Agreement refers to privileges, immunities and rights of UNIOGBIS and to facilities Guinea-Bissau undertakes to provide to UNIOGBIS, the Government shall have the ultimate responsibility for the implementation and fulfilment of such privileges, immunities, rights and facilities by the appropriate local authorities.

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

62. The present Agreement shall remain in force until the departure of the final element of UNIOGBIS from Guinea-Bissau, except that:

(*a*) the provisions of paragraphs 48 (iii), (iv) and (v), 50, 53 and 57 shall remain in force;

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

63. Without prejudice to existing agreements regarding their legal status and operations in Guinea-Bissau, the provisions of the present Agreement shall apply to offices, funds and programmes of the United Nations, their property, funds and assets and their officials and experts on mission that are deployed in Guinea-Bissau and perform functions in furtherance of the mandate of UNIOGBIS.

In witness whereof, the undersigned, being the duly authorized plenipotentiary of the Government and the duly appointed representative of the United Nations, have, on behalf of the Parties, signed the present Agreement.

Done at Bissau this 22 day of the month 11 of the year 2010, in two original copies in the English language.

For the United Nations	For the Government of Guinea-Bissau
[*Signed*] Joseph Mutaboba	[*Signed*] Adelino Mario Odeta
Special Representative of the Secretary-General for Guinea-Bissau	Minister of Foreign Affairs, International Cooperation and Communities
	Guinea-Bissau

(*i*) Agreement between the United Nations and the Government of the State of Kuwait for the establishment in the State of Kuwait of a technical and administrative support office for the United Nations Assistance Mission in Afghanistan. Kuwait City, 28 November 2010*

The United Nations and the Government of the State of Kuwait,

Desiring to strengthen the close ties between them,

Acting in order to support United Nations peacekeeping operations in Afghanistan,

The Government of Kuwait having taken into consideration the request of the United Nations for the establishment in the State of Kuwait of a technical and administrative

* Entered into force provisionally on 28 November 2010 by signature, in accordance with article XV.

support office for the United Nations Assistance Mission in Afghanistan which was established pursuant to Security Council resolution 1401 (2002),

Have agreed as follows:

Article I

An administrative and technical support office for the United Nations Assistance Mission in Afghanistan shall be established in the State of Kuwait.

Article II

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

- "Government" shall mean the Government of the State of Kuwait;
- "Mission" shall mean the United Nations Assistance Mission in Afghanistan;
- "Office" shall mean the technical and administrative support office of the Mission in the State of Kuwait;
- "The Convention" shall mean the 1946 Convention on the Privileges and Immunities of the United Nations.

Article III

In conformity with Article 105 of the Charter, the Government shall extend to UNAMA, as an organ of the United Nations, its property, funds and assets and to those members listed on Article IV below, the privilege and immunities provided for in the Convention to which the State of Kuwait is a party.

Article IV

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

2. Locally recruited members of the Mission shall enjoy such immunities in respect of official functions and exemption from taxation as are provided for in Section 18 (a), (b) and (c) of the Convention.

Article V

The privileges and immunities necessary for the Mission's work in the State of Kuwait shall include the following:

1. Facilitation of procedures for entry and exit of members of the Mission and their property, equipment, supplies, spare parts and means of transport, including exemption from passport and visa regulations, provided that the Mission shall inform the Government of the names of those members who are to be granted prompt and unrestricted freedom of entry and exit. In the event of major movements, the Mission shall inform the Government in advance for the purpose of coordination.

2. Members of the Mission and Office shall enjoy freedom of movement throughout the State of Kuwait, along with their property, supplies, equipment, spare parts and means of transport, in coordination with the Government.

Article VI

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

Article VII

1. The United Nations is entitled to fly its flag on its buildings, premises and means of transport, and is entitled to place distinctive United Nations emblems on the means of transport used in support of the Mission and Office.

2. United Nations means of transport on land, sea and in the air shall be granted freedom of movement, provided that their use and operators are authorized by the United Nations.

3. In accordance with Kuwaiti legislation in force, the Mission and Office shall be entitled to unrestricted communication by radio, satellite or any other forms of communication within Kuwait and with United Nations Headquarters and offices, in addition to telephones, facsimile and other electronic information systems. The frequency to be used for communication by radio shall be determined in agreement with the Government.

4. Members working in the Mission and Office shall be entitled to make arrangements for the processing and transportation of private mail addressed to or sent by them. The Government shall be informed of the nature of such arrangements, and shall not interfere with or censor the mail of the Mission and Office or their members.

Article VIII

1. The Government shall allow the Mission and Offices to occupy premises within the premises of the United Nations Assistance Mission for Iraq (UNAMI) in Kuwait.

2. The premises of UNAMI in Kuwait shall be used without charge. Other areas may be used by agreement between the two parties. Without prejudice to the fact that all such buildings and equipment are on the territory of the State of Kuwait, they shall be inviolable and subject to the exclusive control and authority of the United Nations.

Article IX

The Government shall ensure that the provisions of the Convention on the Safety of United Nations and Associated Personnel are applied to, and in respect of, the Mission and Office and their property, assets and members.

Article X

At the request of the head of the Mission, the Government shall share information that could be of use to the Mission in the fulfilment of its functions, provided that such information is available to the Government.

Article XI

The Mission and Office and all of their members undertake, subject to the provisions of this Agreement, to respect all of the laws and regulations in force in the State of Kuwait. They shall refrain from any action that is inconsistent with the impartial and international nature of their duties or with the spirit of these arrangements.

Article XII

General Assembly resolution 52/247 of 26 June 1998 concerning third-party liability shall be taken into consideration with respect to the implementation of this agreement.

Article XIII

1. Any dispute between the United Nations and the Government concerning the application of the interpretation of this agreement shall be resolved through negotiation or any other agreed mode of settlement.

2. That provision shall not apply to disputes resolved in accordance with Section 30 of the Convention or Section 32 of the Convention on the Privileges and Immunities of Specialized Agencies.

Article XIV

Without prejudice to existing agreements, the present arrangements may, as necessary, be applied to specialized agencies and offices, funds, programmes and processes of the United Nations, their property, funds and assets, and officials and experts present in Kuwait to perform functions and duties related to the Mission and Office, provided that prior written agreement has been obtained from the Special Representative of the Mission, specialized agency, office, fund or programme concerned, and from the Government.

Article XV

Upon signature, this Agreement shall be applied provisionally by the Parties pending its entry into force. This agreement shall enter into force on the date that the Government provides notification that is has completed all of the domestic legal procedures necessary for its entry into force.

Article XVI

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

Article XVII

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

Signed in Kuwait City on the 28th day of November 2010.

For the United Nations:	For the Government of the State of Kuwait:
[*Signed*] Atul Khare	[*Signed*] Khaled Suleiman Al-Jarallah
Assistant Secretary-General for Peacekeeping Operations	Undersecretary of the Ministry of Foreign Affairs

3. Agreements relating to staff members of the Organization

Agreement between the Republic of Austria and the United Nations on social security. Vienna, 23 April 2010*

Having regard to Sections 27 and 28 of the Agreement between the Republic of Austria and the United Nations regarding the Seat of the United Nations in Vienna, signed on 29 November 1995, the Republic of Austria and the United Nations have agreed as follows:

Part I. Definitions

Article 1

In this Agreement:

1. The expression the "United Nations" means the offices of the United Nations established at the Vienna International Centre;

2. The expression "Director-General" means the Director-General of the United Nations Office at Vienna or any officer designated to act on his behalf;

3. The expression "Seat Agreement" means the Agreement between the Republic of Austria and the United Nations regarding the Seat of the United Nations in Vienna, which was signed on 29 November 1995, as amended from time to time;

4. The expression "officials" means the Director-General and all members of the staff of the United Nations except those who are locally recruited and assigned to hourly rates;

5. The expression "Pension Fund" means the United Nations Joint Staff Pension Fund;

* Entered into force on 1 November 2010 by notification, in accordance with article 18.

6. The abbreviation "ASVG" means the General Social Insurance Act, Federal Gazette No. 189/1955, as amended from time to time;

7. The abbreviation "AIVG" means the Unemployment Insurance Act of 1977, Federal Gazette No. 609/1977, as amended from time to time.

Part II. Scope of insurance

Article 2

(1) On taking up their appointment with the United Nations or after the completion of three years of continuous service with the United Nations, officials shall have the right in accordance with the provisions of Article 4 to participate in any of the branches of the social insurance provided for in the ASVG and in the unemployment insurance provided for in the AIVG.

(2) The insurance under paragraph (1) shall have the same legal effect in each of the selected branches as compulsory insurance.

Article 3

(1) Insurance under Article 2 (1) shall take effect on the day on which the official takes up his/her appointment with the United Nations, if a written declaration to participate is made within seven days of taking up the appointment, otherwise on the day following the date on which the declaration is made.

(2) Insurance under Article 2 (1) shall cease on the date on which the official's appointment with the United Nations terminates.

(3) Notwithstanding the provisions of paragraph (2), insurance under Article 2 (1) shall cease as of the effective date of an official's assignment to duty outside Austria for a period of more than three months, unless the insurance is maintained by submission of a written declaration.

(4) In the case of termination of the insurance under paragraph (3), the former insurance may be resumed with the same scope of coverage upon completion of the official's assignment according to the terms of paragraph (1).

(5) On becoming participants in the Pension Fund or after the completion of three years of continuous service with the United Nations, officials shall have the right, according to the terms of Article 4, to terminate their insurance in each of the selected branches of the social insurance provided for in the ASVG and in the unemployment insurance provided for in the AIVG.

Article 4

Officials may avail themselves of

1. the right under Article 2 (1) within three months of taking up their appointment with the United Nations or within three months after the completion of three years of continuous service with the United Nations,

2. the right under Article 3 (3) before taking up their assignment,

3. the right under Article 3 (4) within one month of completing their assignment,

4. the right under Article 3 (5) within three months of becoming participants in the Pension Fund or within three months after the completion of three years of continuous service with the United Nations.

Article 5

Throughout the duration of the insurance in the selected branches under Article 2 (1) the official shall be responsible for the payment of the entire contributions in accordance with the provisions of the ASVG and the AIVG.

PART III. EFFECTS OF BECOMING A PARTICIPANT IN OR SEPARATING FROM THE PENSION FUND

Article 6

(1) When an official becomes a participant in the Pension Fund, the contributions that he/she has paid to the Austrian pension insurance scheme for insurance periods to be taken into account, shall, upon his/her application, be refunded to him/her increased by the adjustment factor under the ASVG applicable for the year of payment of the contributions. Such application shall be made, within eighteen months from the date on which the official becomes a participant in the Pension Fund, to the competent pension insurance institution.

(2) The date for determining the insurance periods to be taken into account and for determining the competent pension insurance institution shall be the day the official became a participant in the Pension Fund, if it is the first day of a month, otherwise the first day of the following month.

(3) The contributions to be refunded shall be due six months after the pension insurance institution has received the application. In the event of a delay in payment, interest shall be payable on the amount involved on the basis of the ASVG adjustment factor for the year in which the application is received by the pension insurance institution.

(4) On refund of the contributions, all claims and entitlements under the Austrian pension insurance scheme in respect of the insurance periods for which contributions have been refunded shall lapse; also, any claims to periodic benefits shall automatically lapse, but the pension and any additional allowances shall still be due for the month following receipt by the insurance institution of the application provided for in paragraph (1).

Article 7

(1) If upon the date on which his/her appointment with the United Nations terminates an official or his/her survivors are not entitled to periodic benefits from the Pension Fund, the said official or his/her survivors eligible for a benefit under the Austrian pension insurance scheme may, within eighteen months after the date on which his/her appointment terminates, transfer the amount provided for in paragraph (2) to the *Pensionsversicherungsanstalt*. Within the same period the official or his/her survivors eligible for a benefit under the Austrian pension insurance scheme may also repay to the pension insurance institution concerned the contributions refunded to the official under Article 6.

(2) For every month of service with the United Nations during which the former official participated in the Pension Fund and which is not already taken into account as a contributory month under the Austrian pension insurance scheme, the amount to be

transferred shall be 20.25 per cent of the monthly pensionable remuneration to which the official was entitled in the month preceding the date on which the appointment terminates; nevertheless that part of the remuneration which exceeds thirty times the maximum daily contributory basis under the Austrian pension insurance scheme in effect at the time when the appointment terminates shall not be taken into account. The amount of the contributions to be repaid under paragraph (1), second sentence, shall be increased by application of the adjustment factor valid at the time when the appointment terminates for the year in which the contributions were refunded.

(3) The percentage referred to in paragraph (2) shall be adjusted by the same amount as the percentage applicable for contributions in the Austrian pension insurance scheme for employees.

(4) The full months taken into account in establishing the amount transferred shall be considered as contributory months of compulsory insurance in the Austrian pension insurance scheme. Through repayment of the contributions, insurance periods, including any increased-benefit insurance, which had lapsed owing to the refund of the contributions under Article 6 (4), shall be restored.

(5) In so far as the amount which the former official or his/her survivors eligible for a benefit under the Austrian pension insurance scheme receive from the Pension Fund instead of periodic benefits falls below the amount to be transferred provided for under paragraph (2), the amount to be transferred by the official or his/her survivors eligible for a benefit under the Austrian pension insurance scheme may be limited to that amount. In this case the first completed months that are not fully covered in the amount shall be disregarded.

Part IV. Miscellaneous Provisions

Article 8

The Federal Ministers responsible for the implementation of this Agreement and the Director-General shall take the administrative steps required for the implementation of this Agreement.

Article 9

In order to simplify the implementation of social insurance in respect of its officials, the United Nations shall take steps to ensure that the necessary notifications are made and the contributions to be paid by the official under Article 5 are transferred to the *Wiener Gebietskrankenkasse*.

Article 10

The declarations required to be made by the official under Article 3 shall be transmitted by the United Nations on behalf of the official to the *Wiener Gebietskrankenkasse.*

Article 11

Without prejudice to its confidential character the United Nations shall, upon request, provide the Austrian insurance institutions with the information necessary for the implementation of this Agreement.

Article 12

No provision of this Agreement shall be interpreted as restricting the provisions of Sections 27 and 28 of the Seat Agreement.

Article 13

For the settlement of differences between the Republic of Austria and the United Nations concerning the interpretation or implementation of this Agreement, the provisions of Section 46 of the Headquarters Agreement shall apply.

PART V. TRANSITIONAL PROVISIONS

Article 14

(1) Officials participating in any branch of the social insurance provided for in the ASVG or in the unemployment insurance provided for in the AIVG on account of their service with the United Nations at the time of entry into force of this Agreement shall have the right within three months of that date to terminate their insurance in any branch by means of a written declaration to become effective on the last day of the month in which the declaration is made.

(2) Officials, who took up their appointment with the United Nations prior to the date of entry into force of this Agreement, shall have the possibility within three months of that date of exercising the right under Article 2 (1).

(3) Article 10 shall apply *mutatis mutandis* to cases covered by paragraphs (1) and (2).

Article 15

(1) In the case of officials who were participants in the Pension Fund on 1 July 1996 or who are participants at the time of entry into force of this Agreement, and who prior to those respective dates have completed at least 12 insurance months in the Austrian pension insurance scheme, the periods of service with the United Nations, during which the official had participated in the Pension Fund prior to entry into force of this Agreement shall be treated, where necessary, as contributory periods of compulsory insurance for the purpose of determining eligibility for benefits under the Austrian pension insurance scheme.

(2) If eligibility for benefit under the Austrian pension insurance scheme exists only through application of paragraph (1), the competent Austrian pension insurance institution shall determine the benefit exclusively on the basis of the Austrian insurance periods and also taking into account the following provisions:

1. Benefits or parts thereof, the amount of which does not depend on the duration of insurance periods completed, shall be calculated in proportion to the ratio between the duration of Austrian insurance periods to be taken into account for the calculation and the period of 30 years, but shall not exceed the full amount;
2. Where periods after the event insured against are to be taken into account for the calculation of invalidity or survivors' benefits, such periods shall be taken into account only in proportion to the ratio between the duration of Austrian insurance periods to be taken into account for the calculation and two thirds of the number of full calendar months between the date on which the person

concerned reached the age of 16 and the date on which the event insured against occurred, but shall not exceed the full period;

3. Subparagraph 1 shall not apply:

(*a*) With regard to benefits deriving from increased-benefit insurance;

(*b*) With regard to income-dependent benefits or parts of benefits designed to ensure a minimum income.

Article 16

In the case of officials whose participation in the Pension Fund commenced after the date of entry into force of this Agreement, periods during which such officials participated in the Pension Fund shall be considered as "neutral" periods in the Austrian pension insurance scheme as laid down in the relevant provisions of the ASVG.

Article 17

In the case of officials serving with the United Nations at the time of entry into force of this Agreement whose appointment terminates within five years of that date, Article 7 (2) shall apply with the exception that a percentage of 7 per cent shall be applied in place of the percentage amount provided for in that Article.

PART VI. FINAL PROVISIONS

Article 18

(1) This Agreement shall enter into force on the first day of the third month following an Exchange of Notes between the representative of the Republic of Austria and the Director-General, duly authorized to that effect.

(2) Upon entry into force of this Agreement, the Exchange of Notes dated 27 July 1982 between the Republic of Austria and the United Nations whereby the Social Security Agreement dated 15 December 1970 between the Government of the Republic of Austria and the United Nations Industrial Development Organization applying, *mutatis mutandis*, to officials of other offices of the United Nations seated in Austria, shall cease to be in force.

Article 19

(1) This Agreement shall apply, *mutatis mutandis*, to other offices of the United Nations established in the Republic of Austria.

Article 20

This Agreement shall cease to be in force:

1. By mutual consent of the Republic of Austria and the United Nations;
2. If the permanent Seat of the United Nations is removed from the territory of the Republic of Austria. In that case, the United Nations and the competent Austrian authorities shall take joint action for the orderly termination and liquidation of all arrangements made under this Agreement.

Article 21

The termination of this Agreement shall not impair the rights which the officials concerned or former officials have acquired thereunder for themselves or for their dependants.

Done at Vienna on the 23rd of April 2010 in duplicate in German and English languages, both texts being equally authentic. In the case of a dispute concerning the interpretation of this Agreement, the English text shall prevail.

For the Republic of Austria:	For the United Nations:
[*Signed*] Rudolf Hundstorfer	[*Signed*] Antonio Maria Costa

B. Treaties concerning the legal status of intergovernmental organizations related to the United Nations

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

During 2010, no States acceded to the Convention.

In 2010, the States parties below undertook to apply the provisions of the Convention to the following specialized agencies: **

State	*Date of receipt of instrument of accession*	*Specialized agencies*
Romania	26 August 2010	International Finance Corporation
Austria	14 January 2010	World Tourism Organization***
Bulgaria	1 July 2010	World Tourism Organization
Serbia	25 January 2010	World Tourism Organization

2. International Labour Organization

On 6 January 2010, the International Labour Organization (ILO) exchanged letters with the Government of the Republic of Vanuatu concerning the application of the Standard Basic Assistance Agreement between the Republic of Vanuatu and the United Nations

* 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.

*** Annex XVIII – United Nations World Tourism Organization (UNWTO) – to the Convention on the Privileges and Immunities of the Specialized Agencies was signed at Jeju, 30 July 2008, and has not yet entered into force.

Development Programme of 27 March 1984 to the activities and personnel of the International Labour Organization in the Republic of Vanuatu.*

On 19 January 2010, an agreement for an extension to the "Supplementary Understanding and its Minutes of the Meeting dated 28 February 2007" ** was concluded with the Government of Myanmar and entered into force. This agreement extends the Supplementary Understanding relating to the role of the Liaison Officer with respect to forced labour complaints channelled through him/her.***

On 17 September 2010, ILO and the Government of Timor-Leste signed the Basic Cooperation Agreement.**** The agreement provides the legal framework for ILO's activities in Timor-Leste.

3. Food and Agriculture Organization

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

No agreements for the establishment of FAO Representations or Decentralized Offices were signed in 2010.

(*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 2010 with the Governments of the following countries acting as hosts to such sessions: Argentina, Chile, Croatia, Greece, Indonesia, Japan, Lebanon, Mexico, Montenegro, Pakistan, Portugal, Thailand, Tonga, Turkey and Uganda.

4. United Nations Educational, Scientific and Cultural Organization

For the purpose of holding international conferences on the territory of Member States, the United Nations Educational, Scientific and Cultural Organization (UNESCO) concluded various agreements that contained the following provisions concerning the legal status of the Organization:

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* Information on agreements concluded with member States is available at: http://www.ilo.org/public/english/bureau/leg/immunities/index.htm.

** GB.298/5/1 (http://www.ilo.org/wcmsp5/groups/public/—ed_norm/—relconf/documents/meetingdocument/wcms_gb_298_5_1_en.pdf).

*** See GB.307/6 (http://www.ilo.org/wcmsp5/groups/public/—ed_norm/—relconf/documents/meetingdocument/wcms_124409.pdf). The full text of the agreement is available at: http://www.ilo.org/public/english/bureau/leg/immunities/index.htm.

**** The full text of the agreement is available at: http://www.ilo.org/public/english/bureau/leg/immunities/index.htm.

***** *United Nations Juridical Yearbook 1972*, United Nations Publication, Sales No. E.74.V.1, p. 32.

Privileges and Immunities

The Government of [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 [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 [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 [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 [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.

5. International Fund for Agricultural Development

(*a*) Basic agreement between the Government of the Federal Democratic Republic of Ethiopia and the International Fund for Agricultural Development (IFAD)*

The Government of Federal Democratic Republic of Ethiopia (hereinafter referred to as "the Government") and the International Fund for Agricultural Development (hereinafter referred to as "IFAD").

Whereas IFAD has decided to establish a country office in Addis Ababa, Ethiopia,

Whereas the Government welcomes the establishment of the Country Office and undertakes to assist IFAD in securing all the necessary facilities for its establishment and operation,

Have agreed as follows:

Article 1. Definitions

For the purpose of the present Agreement:

a. "IFAD" means International Fund for Agricultural Development;

b. "Country" means the Federal Democratic Republic of Ethiopia;

* Entered into force on 29 July 2010 by signature, in accordance with article 15.

c. "Appropriate Ethiopian Authorities" means such federal or regional authorities in Ethiopia as may be appropriate in the context and in accordance with the laws and customs applicable in Ethiopia;

d. "Parties" means the Government and IFAD;

e. "United Nations" means the United Nations established by the Charter of the United Nations on 26 June 1945;

f. "President" means the President of IFAD or any officer designated to act as such on his/her behalf;

g. "Representative" means IFAD staff member representing IFAD in the Country;

h. "Officials of the Country Office" means the Representative and all staff to the country office, in accordance with IFAD rules and regulations, with the exception of those staff recruited locally and remunerated on hourly rates;

i. "Expert on Mission" means persons, other than Officials of IFAD, undertaking missions for IFAD;

j. "Country Office" means any location used by IFAD in the Country for the conducting of operational and administrative activities;

k. "Property of the Country Office" means all property including funds, incomes and other assets, belonging to IFAD or held or administered by same in furtherance of its official functions;

l. "Archives of the Country Office" includes all records, correspondence, documents, manuscripts, computer records, still and motion pictures, films and sound recordings, belonging to or held by IFAD in furtherance of its official functions; and

m. "Telecommunication" means any emission, transmission or reception of written or verbal information, images, sound or information of any nature by wire, radio, satellite, optical fiber or any other electronic or electromagnetic means.

Article 2. Purpose

This Agreement shall regulate matters relating to or arising out of the presence and operations of the Country Office of IFAD in the Country.

Article 3. Juridical personality and flag

1. The Government recognizes the juridical personality of the Country Office and in particular its capacity to:

a. Contract;

b. Acquire and dispose of immovable and movable property in accordance with the law of the Country; and

c. Institute judicial proceeding.

2. The Country Office shall have the right to display its flag and/or other United Nations identifiers on its premises and vehicles.

Article 4. The Country Office

The Government undertakes to facilitate to the extent its capacity allows, as of the date of entry into force and during the life of this Agreement, the use and occupancy of premises and the use of installations suitable for the operation of the Country Office, as defined in Article 1 of this Agreement, in the implementation of this provision:

a. The Appropriate Ethiopian Authorities shall exercise due diligence to ensure that the security and tranquility of the Country Office is not disturbed by any person or group of persons attempting unauthorized entry or creating disturbances in the immediate vicinity of the Country Office;

b. If so requested by the Representative, the Appropriate Ethiopian Authorities shall provide such number of police as may be considered necessary for the preservation of order in the Country Office; and

c. The Appropriate Ethiopian Authorities shall ensure that the Country Office is supplied with the necessary public utilities and services, including, without limitation by reason of this enumeration, fire protection, electricity, water, sewerage, post and telecommunications. When public utilities and services are supplied by government authorities or bodies under their control, the Country Office shall be supplied at tariffs not exceeding the rates accorded to other United Nations Specialized Agencies.

Article 5. Inviolability of the Country Office

1. The premises of the Country Office shall be inviolable. No officer or official of the Country, or person exercising any public authority within Ethiopia, shall enter the premises of the Country Office to perform any duties therein except with the consent of and under conditions approved by the Representative. The Representative's consent to such entry shall be presumed in the event of fire or other analogous emergency requiring urgent action. The service of legal process, including the seizure of private property, may take place within the Country Office only with the consent of and under conditions approved by the Representative.

2. The Country Office shall be under the control and authority of IFAD, which shall have the power to make regulations applicable with regards to the premises for the full and independent performance of its function.

3. The Country Office shall not be used in any manner incompatible with the functions of IFAD. It shall prevent the Office from becoming a refuge from justice for persons who are avoiding arrest under any law of Ethiopia or who are required by the Government for extradition to another state or who are endeavoring to avoid service or legal process.

Article 6. Property of the Country Office

1. The property of the Country Office, wherever located in Ethiopia, shall enjoy immunity from every form of legal process, except insofar as in any particular case immunity shall have expressly been waived by the President. Waiver of immunity from legal process shall not be held to imply waiver of immunity in respect of any measure of execution, for which a separate waiver shall be necessary.

2. The archives and documents of the Country Office shall be, wherever located in Ethiopia, inviolable.

Article 7. Freedom from taxation

1. With respect to all official activities, the Country Office and its property shall be exempt from all forms of direct taxation.

2. The Country Office shall be exempt from customs duties and all other levies as well as restrictions on goods imported or exported for its official purposes.

Article 8. Financial facilities

Without being restricted by financial controls, regulations or moratoria of any kind, the Country office may receive, purchase, hold and transfer funds or currencies of any kind and operate bank and similar accounts in any currency as accorded to other international organizations of similar status and in accordance with the foreign exchange regulations of Ethiopia.

Article 9. Communication

1. The Country office shall enjoy for its official communication treatment not less favorable than that accorded by the Government to any other United Nations organization, in the matter of priorities and rates on mails, cables, telegrams, telex, radiograms, telephotos, telephone and other communication and press rates for information to press and radio.

2. No censorship shall be applied to the official correspondence or other communication of the Country Office and to all correspondence or other communication directed to IFAD or to any official of IFAD. Such immunity shall extend, without limitation by reason of this enumeration, to publications, still and moving pictures, videos and films and sound recordings when the correspondences are for official purpose.

3. The Country Office shall have the right to use codes and to dispatch and receive correspondences and other official communications by courier or in sealed bags with the same privileges and immunities extended in respect of them as are accorded to diplomatic couriers and bags.

4. Nothing in this Article shall be construed to preclude the adoption of appropriate security precautions to be determined by supplementary agreement between the Parties.

Article 10. Entry into the Country and visa

1. The Government shall take all the necessary measures to facilitate the entry into and departure from Ethiopia for the following persons, irrespective of their nationalities, and shall impose no impediment on the transit to or from the Country:

a. Officials of IFAD assigned to the Country Office, their spouses and dependant relatives;

b. Officials of the United Nations or Officials of IFAD visiting the Country Office on official business; and

c. Experts performing official missions for the Country Office or serving on bodies established by IFAD and the spouses of such experts.

2. The Representative shall communicate the names of such persons to the Government within a reasonable time.

3. Visas that may be required for Officials of IFAD, their spouses and dependent relatives, shall be granted free of charge.

Article 11. Officials of the Country Office

1. IFAD may assign to the Country Office such Officials as are deemed necessary to fulfill its obligations. The Government shall grant to Officials of the Country Office the following privileges and immunities:

a. Immunity from legal process of any kind in respect of words spoken or written, and acts performed by them in their official capacity. Such immunity shall continue notwithstanding that the persons concerned have ceased to be Officials of the Country Office;

b. Inviolability of all papers, documents and other official materials;

c. Exemption from any form of direct taxation in respect of the salaries or emoluments paid and other benefits accorded to them by IFAD. In the event that all Ethiopian nationals and foreign permanent residents working for the United Nations are subjected to payment of income tax on their salaries and emoluments, then the same measure shall apply to Ethiopian nationals and foreign permanent residents working for IFAD;

d. Exemption with respect to themselves, their spouses and dependent relatives on them, from immigration restrictions and alien registration;

e. For Officials of IFAD who are not nationals or permanent residents of Ethiopia, freedom to acquire or maintain within the Country foreign securities, foreign currency accounts and other movables and the right to take the same out of the Country through authorized channels without prohibition or restriction in accordance with the foreign exchange regulations of Ethiopia;

f. For Officials of IFAD who are not nationals or permanent residents of Ethiopia, same privileges in respect of currency exchange facilities as are accorded to officials of comparable rank forming part of diplomatic missions;

g. For Officials of IFAD who are not nationals of Ethiopia, same protection and repatriation facilities with respect to themselves, their spouses and their dependant relatives as are accorded in time of international crisis to members of diplomatic missions; and

h. The right to import, except for Ethiopian nationals, permanent foreign residents of Ethiopia, persons other than IFAD Officials performing missions for IFAD and their spouses and other persons invited to the Office on official business, free of duty or other levies, prohibitions and restrictions on imports, their furniture and personal effects within twelve months after taking up their post in the Country. This exemption shall include one automobile upon their first installation, the importation, transfer, replacement and disposal of which shall be subject to the same regulations applicable to members of other United Nations subsidiary organs of comparable rank.

2. The Country Office shall communicate to the Government annually a list of names of Officials and staffs of the Country Office assigned to it.

3. The Government shall issue to the Officials of the Country Office, their spouses and dependant relatives, who are entitled to the privileges, immunities and facilities, a special

identity card specifying that the holder is an Official of the Country Office or the spouse of or a relative dependant on such an Official and that the holder enjoys the privileges, immunities and facilities provided for in this Article.

4. The Government shall:

a. Facilitate to expatriate Officials of the Country Office the location of suitable housing accommodation as necessary; and

b. Provide to expatriate Officials of the Country Office, who wish to drive vehicles in the Country, driver's license.

Article 12. Abuse of privileges and immunities

1. The privileges and immunities provided for under Articles 10 and 11 of the Agreement are conferred in the interests of the Country Office of IFAD and not for the personal benefit of individuals. The immunity of such individual may be waived by the President whenever the immunity would impede the course of justice and can be waived without prejudice to the interests of IFAD.

2. The Country Office and its Officials shall cooperate at all times with the appropriate Ethiopian Authorities to facilitate the proper administration of justice, to secure the observance of police regulations and to prevent the occurrence of any abuses in connection with the privileges and immunities accorded under Article 11 of this Agreement.

Article 13. General provisions

1. Without prejudice to the privileges and immunities conferred by this Agreement, the Country Office and all its Officials shall respect the laws of Ethiopia.

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

Article 14. Settlement of disputes

Any dispute between the Government and IFAD concerning the interpretation or application of this Agreement or any supplemental agreement(s) or any question affecting the Office or the relationship between the Government and IFAD, which is not settled by negotiation or other agreed mode of settlement, shall be referred for final decision to a tribunal of three arbitrators: one to be chosen by the Ministry of Foreign Affairs of the Federal Democratic Republic of Ethiopia, one by the President and the third, who shall be the chairman of the tribunal, to be chosen by the first two arbitrators. Should the first two arbitrators fail to agree upon the third, such third arbitrator shall be chosen by the President of the International Court of Justice.

Article 15. Entry into force and termination

1. This Agreement shall enter into force upon signature by IFAD and the Government and shall remain valid unless terminated in accordance with paragraph 2 of this Article.

2. This Agreement may be terminated by either Party by giving a written notice to the other and shall terminate sixty (60) days after receipt of such notice. Notwithstanding any such notice of termination, this Agreement shall remain in force until complete

fulfillment or termination of all the activities of the Country Office entered into by virtue of this Agreement.

3. The obligations assumed by the Government shall survive the termination of this Agreement under the foregoing paragraph to the extent necessary to permit the orderly withdrawal of the property of the Country Office of IFAD and its Officials by virtue of this Agreement.

In witness whereof, the undersigned, being duly authorized have signed and sealed this Agreement in two originals in the English language, both texts being equally authentic.

Done at Rome, Italy, this 29th day of July 2010.

[*Signed*]	[*Signed*]
For the Government of the Federal Democratic Republic of Ethiopia	For the International Fund for Agricultural Development

(*b*) Headquarters agreement between the Republic of Ghana and the International Fund for Agricultural Development on the establishment of IFAD's country office*

Whereas the International Fund for Agricultural Development (IFAD), a Specialized Agency of the United Nations Organization, wishes to establish a Country Office in the Republic of Ghana to support its operation, including supervision of projects; consolidate its cooperation and linkages; be close to its partners and programmes; and manage knowledge; and the Republic of Ghana agrees to permit the establishment of such an office.

Whereas the Republic of Ghana acceded on 9 September 1958 to the Convention on the Privileges and Immunities of the Specialized Agencies.

Whereas the Republic of Ghana signed on 19 October 1977 and ratified on 5 December 1977 the Agreement Establishing IFAD.

Now therefore, the Republic of Ghana and IFAD hereby agree as follows:

Article I. Definitions

For the purpose of this Agreement:

(*a*) "Government" means the Republic of Ghana;

(*b*) "the Fund" or "IFAD" means the International Fund for Agricultural Development;

(*c*) "Office" means the International Fund for Agricultural Development's Country Office located in the Republic of Ghana;

* Entered into force on 1 September 2010 by signature, in accordance with article XIV. In 2010, IFAD concluded two textually similar agreements, namely the Headquarters Agreement between the Republic of Rwanda and the International Fund for Agricultural Development on the Establishment of the IFAD Country Office (entered into force on 20 March 2010); and the Headquarters Agreement between the Republic of Zambia and the International Fund for Agricultural Development on the Establishment of the IFAD Country Office (entered into force on 23 July 2010). These two agreements are not reproduced in this volume.

(*d*) "IFAD officials" means the Country Representative and all other officials as specified by IFAD in accordance with Article VI, Section 18 of the Convention on the Privileges and Immunities of the Specialized Agencies, 1947.

Article II. Juridical personality of the Fund

1. The Government recognizes the juridical personality of the Fund, and in particular its capacity:

(i) to contract;

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

(iii) to be a party to juridical proceedings.

2. The Government shall permit the Fund to purchase or rent premises to serve as its Office.

3. The Office shall be authorized to display the emblem of the Fund on its premises and vehicles.

Article III. Inviolability of the Office

1. The property and assets of the Office, 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.

2. The archives of the Office, and in general all documents belonging to it or held by it, shall be inviolable, wherever located.

3. The Office and its property and assets, wherever located and by whomsoever held, shall enjoy immunity from every form of legal process except in so far as in any particular case the Fund has expressly waived its immunity. No waiver of immunity shall extend to any measure of execution except when expressly so done.

4. The Office shall not allow its premises to serve as a refuge for any person wanted for a criminal offence or in respect of whom a warrant, conviction or expulsion order has been issued by the competent authorities of the Republic of Ghana.

5. The authorities, officials and agents of the Republic of Ghana shall not enter the Office in an official capacity except at the request, invitation, or with the authorization of the Office, granted by the Country Representative or his or her delegate. In the event of *force majeure*, fire or any other calamity requiring urgent measures of protection, the consent of the Country Representative or his or her representative shall be considered to have been given. However, if requested by the Country Representative, any person who has entered the Office with his or her presumed consent shall leave the Office immediately.

6. The competent authorities of the Republic of Ghana shall, to the extent possible, take all necessary measures to protect the Office against any intrusion or damage, to ensure that their tranquility is not disturbed and to preserve their dignity.

7. The residences of IFAD's officials who are not citizens or permanent residents of the Republic of Ghana shall be entitled to the same inviolability and protection as the Office.

Article IV. Public services

1. The Government undertakes to assist the Office as far as possible in obtaining and making available where applicable the necessary public services on equitable terms. The office shall bear the costs of these services.

2. In the case of interruption or threatened interruption of any such services, the competent authorities shall consider the Office's need for such services as important as that of any other international organization and shall therefore take the necessary measures to ensure that the Office's activities are not unduly impaired by such a situation.

Article V. Communications

The Office's communications shall enjoy protection under the conditions and limitations defined in section 11 and 12 of the Convention on the Privileges and Immunities of the Specialized Agencies.

Article VI. Tax exemption

The Office, its assets, income and other property shall be exempt from:

a) All direct taxes on goods directly imported or purchased locally by the organization for its official use in the Republic of Ghana, it being understood, however, that no claim of exemption will be made from taxes which are, in fact, no more than charges for public utility services;

b) Customs duties or other taxes. However, it is understood that the Office shall not be exempted from prohibitions or restrictions on imports and exports in respect of articles imported or exported by the Office for its official use;

c) Articles imported under such exemption will not be sold in the Republic of Ghana except under conditions agreed with the Government; and subject to compliance with such conditions as the competent authority may prescribe for the protection of revenue;

d) Customs duties or other taxes on imports and exports in respect of its publications.

Article VII. Financial facilities

1. In connection with its official activities the Office may freely:

a) Acquire currencies and funds, hold them, use them and have accounts in the Republic of Ghana in (local currency) or any other currency and convert any currency held by it into any other currency;

b) Transfer its funds within the territory of the Republic of Ghana and transfer other currencies to or from Ghana within the laws of Ghana.

2. The Office shall enjoy the same exchange facilities as other international organizations represented in the Republic of Ghana.

Article VIII. Social security

Since IFAD'S officials are covered by the Fund's social security scheme or a similar scheme, the Office shall not be required to contribute to any social security scheme in

the Republic of Ghana, and the Government shall not require any member of the Office covered by the Fund's scheme to join such a scheme. However, it is understood that IFAD shall be responsible to contribute for social security scheme for its employees who are not covered by the Fund's scheme.

Article IX. Entry, travel and sojourn

1. The Government shall recognize and accept the United Nations laissez-passer issued to officials of IFAD as valid travel documents.

2. Applications for visas, where required, from officials of IFAD holding United Nations laissez-passer, when accompanied by a certificate that they are travelling on the business of IFAD, shall be dealt with as speedily as possible, in addition, such persons shall be granted facilities where available for speedy travel.

3. Similar facilities to those specified in paragraph 2 shall be accorded to experts and other persons who, though not the holders of United Nations laissez-passer, have a certificate that they are travelling on the business of IFAD.

4. The Government shall facilitate the entry into or departure from the Republic of Ghana, when travelling to or from the Office, of persons exercising official functions at the Office or invited by it.

5. The Government undertakes to authorize the following persons and their dependants to enter into the Republic of Ghana and sojourn in the country throughout the duration of their assignment or missions to the Office:

a) The Country Representative and other IFAD's officials;

b) All other persons invited by the Office to perform official assignments.

6. Without prejudice to the specific immunities to which they may be entitled, the persons referred to in paragraph 5 above shall not, during their assignment or missions, be required by the authorities of the Republic of Ghana to leave the territory of the Republic of Ghana unless it is established in accordance with the provisions of Article XII paragraph 6 hereof, that they have abused the privileges to which they are entitled by pursuing an activity unrelated to their official functions or mission, or that they have overstayed and not renewed the period of stay allowed to them by their visa.

Article X. Identity cards

1. The Country Representative shall communicate to the Government a list of the IFAD's officials (including spouses and other dependants) and inform it of any changes in this list.

2. Upon notification of their appointment, the Government shall issue to all persons referred to in paragraph 1 a card bearing the photograph of its holder which attests that such person is a member of the Office. This card shall be recognized by the competent authorities as an attestation of the person's identity and status as a member of the Office.

Article XI. Privileges and immunities of IFAD's officials

1. Without prejudice to the provisions applicable to the Organization under the Convention on the Privileges and Immunities of the Specialized Agencies, IFAD's officials shall enjoy the following privileges and immunities in the Republic of Ghana:

a. Immunity from legal process, even after the termination of their functions, in respect of all acts, including words spoken or written, performed by them in their official capacity; during their term of office;

b. Exemption from income taxation on salaries and emoluments for IFAD officials;

c. Exemption, together with their spouses and other dependents, from immigration restrictions and alien registration;

d. Exemption, together with their spouses and other dependents, from national service obligations and any other compulsory service;

e. Exemption from import duty and other levies on their household and personal effects imported within three (*3*) months after first taking up their functions in the Republic of Ghana;

f. Every three (*3*) years, admission of one vehicle per family, imported or purchased, free of import duty and other levies, provided that such vehicle is not sold or transferred during this period except in accordance with applicable rules and procedures;

g. In the event of international crisis, to be accorded the same repatriation facilities as members of the diplomatic corps accredited to the Government, for themselves, their spouses and other dependents;

h. The same exchange facilities as those accorded to officials of comparable rank of diplomatic missions accredited to the Government.

2. Throughout the duration of his or her functions, the Country Representative shall enjoy the privileges and immunities accorded to the heads of diplomatic missions. The other senior members of the Office designated from time to time by the Country Representative on the basis of the positions of responsibility which they fill shall be accorded the privileges granted to comparable diplomatic agents.

Article XII. General provisions

1. The Government shall make every effort to ensure that the Office of the IFAD's officials enjoy treatment not less favorable than that granted to other intergovernmental, international and regional organizations represented in the Republic of Ghana.

2. The privileges and immunities provided for in this Agreement are not designed to secure personal advantage for their beneficiaries; they are designed exclusively to ensure that the Office may operate freely in all circumstances, and to safeguard the complete independence of the persons to who they are granted.

3. Without prejudice to the privileges and immunities granted under this Agreement, the Office and all persons who enjoy these privileges and immunities have the duty to respect the laws and regulations of the Republic of Ghana. They also have the duty not to interfere in the internal affairs of the Republic of Ghana.

4. The President of IFAD has the right to waive the immunity when he considers that it would impede the course of justice and can be waived without prejudice to the interests of the Office.

5. The President of IFAD shall take all measures to prevent any abuse of the privileges and immunities granted under this Agreement; to this end, he or she shall issue such regulations, applicable to IFAD's officials and others concerned, as may be deemed necessary and appropriate.

6. Should the Government consider that there has been an abuse of a privilege or immunity granted under this Agreement, consultations shall take place at its request, between the Country Representative and the competent authorities with a view to determining whether such an abuse has taken place. Should such consultations not produce a result which is satisfactory to the Government and the Country Representative, the matter shall be settled in accordance with the procedure described in article XIII.

7. Nothing in this Agreement shall be construed as limiting the right of the Government to take such measures as are necessary to safeguard the security of the Republic of Ghana.

8. Should the Government find it necessary to apply paragraph 7 of this Article, it shall contact the Country Representative as soon as circumstances permit with a view to determining by mutual agreement the measures required to protect the interests of the Fund.

9. The provisions of this Agreement are applicable to all persons covered by the Agreement, regardless of whether the Government maintains diplomatic relations with the State of which such persons are nationals, or whether such State grants similar privileges and immunities to the diplomatic officials and nationals of the Republic of Ghana.

10. The Government shall be responsible for dealing with any claims which may be brought by third parties against the Fund or against its officials or consultants or other persons performing services on behalf of the Fund and shall hold the Fund and the abovementioned persons harmless in case of any claims or liabilities, except where it is agreed by the Government and the Fund that such claims or liabilities arise from the gross negligence or willful misconduct of such persons.

11. Whenever this Agreement imposes obligations on the competent authorities, each party shall be ultimately responsible for ensuring the fulfillment of its obligations.

Article XIII. Interpretation and settlement of disputes

1. This Agreement shall be interpreted in the light of its principal objective, which is to enable the Office to carry out its activities fully and efficiently.

2. Where an allegation is substantiated, the party in breach shall undertake in writing to remedy the breach and notify the other party in writing the measures taken or proposed to be taken to remedy the breach and prevent further breaches.

3. Any dispute between the Government and the Office concerning the interpretation or application of this Agreement, or of any supplementary arrangement, which is not settled by negotiation shall, unless the parties agree otherwise, be referred for final decision to a tribunal of three (3) arbitrators, one to be named by the Government, one to be named

by the President of the Fund, and the third, who shall chair the tribunal, to be chosen by mutual agreement by the other two arbitrators.

4. Should the first two arbitrators fail to agree on the choice of the third within six months following their appointment, the third arbitrator shall be name by the President of the International Court of Justice unless he or she is a national of the Republic of Ghana, in which case the third arbitrator shall be named by the Vice president of the International Court of Justice.

5. The decisions of the tribunal of arbitrators shall be fully binding.

Article XIV. Entry into force and revision

1. The provision of this Agreement enters into force upon signature by both parties.

2. This Agreement will remain in force while the Office remains established in the Republic of Ghana.

3. The obligations assumed by the Government and IFAD under this Agreement shall survive its termination to the extent necessary to permit orderly withdrawal of the property, funds and assets of the Fund and the officials and other persons performing services on behalf of the Fund.

4. This Agreement may only be amended by mutual agreement of the Parties in writing.

5. This Agreement entered into by the Government and IFAD shall cease to be in force six months after either party gives notice in writing to the other of its decision to terminate this agreement

In witness whereof the undersigned duly authorized representatives of the Government and the Fund respectively have, on behalf of both parties, signed the present Agreement in Accra, on this [written] First day of [written] September 2010 in two original copies.

[*Signed*]	[*Signed*]
For the Republic of Ghana	For the International Fund for Agricultural Development
Hon. Dr. Kwabena Duffour	H.E. Kanayo Felix Nwanze

6. United Nations Industrial Development Organization

(*a*) Memorandum of understanding between the United Nations Industrial Development Organization (UNIDO) and the Federal Service for Supervision of Natural Resources Use of the Russian Federation (Rosprirodnadzor), signed on 12 February 2010*

Article VI. Privileges and immunities

Nothing in or relating to the Memorandum of Understanding may be deemed a waiver, express or implied, of any of the privileges and immunities of UNIDO or Rosprirodnadzor.

* Entered into force on 12 February 2010.

(*b*) Grant agreement between the United Nations Industrial Development Organization and the International Fund for Agricultural Development regarding the implementation of a project entitled "UNIDO-HLC-3A: promoting agribusiness in Africa", signed on 4 and 16 February 2010

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.

(*c*) Implementation agreement between the United Nations Industrial Development Organization, the United Nations Environment Programme and the Ministry of Environment, Housing and Territorial Development of Colombia regarding the implementation of a project entitled "Strengthening national governance for the Strategic Approach to International Chemicals Management (SAICM) implementation in Colombia", signed on 16 and 18 March, and 7 and 28 May 2010[*]

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 28 May 2010.

(*d*) Memorandum of understanding between the United Nations Industrial Development Organization and the International Labour Organization regarding the implementation of a programme in Guinea entitled "Projet conjoint d'appui au mouvement de la jeunesse et à certains groupes de jeunes les plus déshérités" [Joint project providing support to the youth movement and to some of the most underprivileged youth groups*], signed on 4 and 10 August 2010**

14. Unless otherwise provided in countries of operation in which a Host Government Agreement is in effect between the ILO and the Government concerned or where the latter has ratified the Convention on Privileges and Immunities of the Specialized Agencies (1947) and Annex I concerning the ILO, UNIDO shall ensure that the Government concerned accords to the ILO the privileges and immunities under the Standard Basic Assistance Agreement between the Government and UNDP as specified in Section 7 of Annex I by notifying the Government of the present Understanding.

The privileges and immunities to which the Implementing Agency and its personnel are entitled may be waived only by the Director-General of the Implementing Agency.

(*e*) Agreement between the United Nations Industrial Development Organization and the Government of Italy regarding the implementation of a project in Lebanon entitled "Community empowerment and livelihoods enhancement project", signed on 7 October 2010***

Article XVII. Miscellaneous provisions

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

(*f*) Basic cooperation agreement between the United Nations Industrial Development Organization and the Government of the Republic of Montenegro, signed on 25 October 2010****

Article X. Privileges and Immunities

1. The Government shall apply to UNIDO, including its organs, property, funds and assets, and to its officials, including the UNIDO Representative in Montenegro, and his or her staff in the country, the provisions of the Convention on the Privileges and Immunities of the United Nations, except that if the Government has acceded in respect of UNIDO to the Convention on the Privileges and Immunities of the Specialized Agencies, the Govern-

* Translation of the programme title from the French language provided by the Secretariat.

** Entered into force on 10 August 2010.

*** Entered into force on 7 October 2010.

**** Entered into force on 25 October 2010.

ment shall apply the provisions of the latter Convention, including Annex XVII thereof relating to UNIDO.

2. The Representative and his or her staff in the country shall be granted such additional privileges and immunities as may be necessary for the effective exercise of their official functions. In particular, the Representative shall enjoy the same privileges and immunities as the Government accords to diplomatic envoys in accordance with international law.

3 (*a*). Except as the Government and UNIDO may otherwise agree in Project Documents relating to specific projects, the Government shall grant all persons, other than Government nationals employed locally, performing services on behalf of UNIDO, who are not covered by paragraphs 1 and 2 above, the same privileges and immunities as are granted to officials under Section 18 or 19, respectively, of the Conventions on the Privileges and Immunities of the United Nations or of the Specialized Agencies, as applicable;

3 (*b*). For purposes of the instruments on privileges and immunities referred to in the preceding parts of this Article:

(i) All papers and documents relating to a project in the possession or under the control of the persons referred to in sub-paragraph 3 (a) above shall be deemed to be documents belonging to UNIDO; and

(ii) Equipment, materials and supplies brought into, or purchased, or leased by those persons within the country for purposes of a project shall be deemed to be the property of UNIDO.

4. The expression "persons performing services" as used in Articles X, XI and XIV of this Agreement includes volunteers, consultants and juridical as well as natural persons and their employees. It includes governmental or nongovernmental organizations or firms which UNIDO may retain to implement or to assist in the implementation of UNIDO assistance to a project and their employees. Nothing in this Agreement shall be construed to limit the privileges, immunities or facilities conferred upon such organizations or firms or their employees in any other instrument.

(*g*) Letter of agreement between the United Nations Industrial Development Organization and the United Nations Environment Programme regarding the implementation of a project entitled "Assessments and guidelines for sustainable liquid biofuels production in developing countries", signed on 26 October and 9 November 2010*

Responsibility for claims

38. UNIDO shall be responsible for dealing with any claim by third parties brought as a result of execution and operation of activities carried out by UNIDO or its subcontractors under this project document, in relation to loss of or damage to property, personal injury, disability, death or any other event caused by its activities or omissions. UNEP shall be responsible for dealing with any claim by third parties brought as a result of execution

* Entered into force on 9 November 2010.

and operation of activities carried out by UNEP or its sub-contractors under this project document, in relation to loss of or damage to property, personal injury, disability, death or any other event caused by its activities or omissions. Nothing in or relating to this project document shall be deemed a waiver of any of the privileges and immunities accorded to UNIDO and UNEP under international law.

(*h*) Exchange of letters extending the agreement between the United Nations Industrial Development Organization and the Government of Japan concerning the contribution by the Government of Japan to the UNIDO Investment and Technology Promotion Office Tokyo service aimed at promoting industrial investment in developing countries from 1 January 2011 to 31 December 2013, signed on 14 December 2010[*]

6. It is confirmed that the Convention on the Privileges and Immunities of the United Nations (1946) applies to the Service in Tokyo and its personnel until the Convention on the Privileges and Immunities of the Specialized Agencies enters into effect for Japan with respect to UNIDO, after which time the latter convention shall apply.

7. International Atomic Energy Agency

In 2010, one State became Party to the Agreement on the Privileges and Immunities of the International Atomic Energy Agency, 1959.[**] By the end of the year, there were 82 Parties.

8. Organisation for the Prohibition of Chemical Weapons

Agreement between the Organisation for the Prohibition of Chemical Weapons (OPCW) and the Kingdom of Denmark 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

[*] Entered into force on 14 December 2010.

[**] United Nations, *Treaty Series*, vol. 374, p. 147.

[***] Entered into force on 15 April 2010. In 2010, the OPCW concluded two textually similar agreements, namely the Agreement between the Organisation for the Prohibition of Chemical Weapons and the Portuguese Republic on the Privileges and Immunities of the OPCW (entered into force on 2 July 2010); and the Agreement between the Organisation for the Prohibition of Chemical Weapons and the Government of the United Arab Emirates (entered into force on 20 January 2010). These two agreements differ only slightly from the agreement with the Kingdom of Denmark and are not reproduced in this volume.

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 Kingdom of Denmark have agreed as follows:

Article 1. Definitions

In this Agreement:

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

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

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

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

1. 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 State 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 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 this Article apply irrespective of whether the State Party maintains or does not maintain diplomatic relations with the State of which the person designated in paragraph 1 of this Article is a national and irrespective of whether the State of which that person is a national grants a similar privilege or immunity to the diplomatic envoys or nationals of the State Party.

5. 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 GPCW 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 occured 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 19 July 2000, in the English language.

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 2010, 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 2010*

No peacekeeping missions or operations were established in 2010.

(ii) *Changes in the mandate and/or extensions of time limits of ongoing peacekeeping operations or missions in 2010*

a. Cyprus

The United Nations Peacekeeping Force in Cyprus (UNFICYP) was established by Security Council resolution 186 (1964) of 4 March 1964.[1] The Security Council decided by resolutions 1930 (2010) of 15 June 2010 and 1953 (2010) of 14 December 2010 to extend the mandate of UNFICYP until 15 December 2010 and 15 June 2011, respectively.

In resolution 1930 (2010), the Council welcomed the appointment of Lisa Buttenheim as the Secretary-General's new Special Representative to Cyprus.

On 14 October 2010, a new, seventh, crossing point was opened in the north-west of the island at Limnitis/Yeşilırmak, a development which the Council welcomed in resolution 1953 (2010).

[1] For more information about UNFICYP, see the UNFICYP website at http://www.unficyp.org and Report of the Secretary-General on the United Nations operation in Cyprus covering developments from 21 November 2009 to 20 May 2010, dated 28 May 2010 (S/2010/264), and from 21 May 2010 to 20 November 2010, dated 26 November 2010 (S/2010/605).

b. Syria and Israel

The United Nations Disengagement Observer Force (UNDOF) was established by Security Council resolution 350 (1974) of 31 March 1974.[2] The Security Council renewed the mandate of UNDOF by resolutions 1934 (2010) of 30 June 2010 and 1965 (2010) of 22 December 2010, until 31 December 2010 and 30 June 2011, respectively.

c. Lebanon

The United Nations Interim Force in Lebanon (UNIFIL) was established by Security Council resolutions 425 (1978) and 428 (1978) of 19 March 1978.[3] Following a request by the Lebanese Foreign Minister, presented in a letter dated 20 July 2010 addressed to the Secretary-General, the Secretary-General recommended the Security Council to consider the renewal of UNIFIL for a further period of 12 months.[4] The Security Council renewed the mandate of UNIFIL by resolution 1937 (2010) of 30 August 2010, until 31 August 2011.

In accordance with resolution 1325 (2000) on women, peace and security, a UNIFIL Gender Unit has been established and a mission-wide gender task force of military and civilian personnel has been initiated.[5]

The Strategic Military Cell terminated its functions on 30 June 2010 in accordance with the decision of the General Assembly in its resolution 62/25 of 20 June 2008, and is now fully integrated within the reinforced Office of Military Affairs of the Department of Peacekeeping Operations.[6]

The Department of Peacekeeping Operations and UNIFIL completed a joint review of the operational capacity of UNIFIL, including its force structure, assets and requirements, on land and at sea. The conclusions of the review were conveyed to the Security Council in a letter dated 12 February 2010 from the Secretary-General to the President of the Security Council.[7] In resolution 1937 (2010), the Council welcomed the conclusions of the joint review and called for their rapid implementation.

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[2] For more information about UNDOF, see the UNDOF website at http://www.un.org/en/peacekeeping/missions/undof and Report of the Secretary-General on the United Nations Disengagement Observer Force for the period from 1 January to 30 June 2010, dated 9 June 2010 (S/2010/296), and for the period from 1 July to 31 December 2010, dated 1 December 2010 (S/2010/607).

[3] For more information about UNIFIL, see the UNIFIL website at http://unifil.unmissions.org; the eleventh and twelfth semi-annual reports of the Secretary-General on the implementation of Security Council resolution 1559 (2004), dated 19 April (S/2010/193) and 18 October 2010 (S/2010/538), respectively; and the Twelfth, Thirteenth and Fourteenth reports of the Secretary-General on the implementation of Security Council resolution 1701 (2006) dated 26 February (S/2010/105), 1 July (S/2010/352) and 1 November 2010 (S/2010/565), respectively

[4] Letter dated 11 August 2010 from the Secretary-General addressed to the President of the Security Council (S/2010/430).

[5] Thirteenth report of the Secretary-General on the implementation of Security-Council resolution 1701 (2006), dated 1 July 2010 (S/2010/352).

[6] Reports of the Secretary-General on the implementation of Security Council resolution 1701 (2006), dated 27 June 2008 (S/2008/425) and 1 July 2010 (S/2010/352).

[7] Letter dated 12 February 2010 from the Secretary-General to the President of the Security Council (S/2010/86).

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.[8] By resolution 1920 (2010) of 30 April 2010, the Security Council decided to extend the mandate of MINURSO until 30 April 2011.

In resolution 1920 (2010), the Council welcomed the appointment of the Special Representative of the Secretary-General for Western Sahara and Head of MINURSO Hany Abdel-Aziz.

e. 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.[9] By resolution 1925 (2010) of 28 May 2010, the Council, acting under Chapter VII of the Charter of the United Nations, extended the mandate of MONUC until 30 June 2010 and decided that MONUC shall, as from 1 July 2010, bear the title of the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO), to reflect the new phase reached in the country.

In the same resolution, the Council decided that MONUSCO shall be deployed until 30 June 2011 and authorized that MONUSCO shall comprise, in addition to the appropriate civilian, judiciary and correction components, a maximum of 19,815 military personnel, 760 military observers, 391 police personnel and 1,050 personnel of formed police units; authorized the withdrawal of up to 2000 United Nations military personnel by 30 June 2010 from areas where the security situation permits; and authorized MONUSCO, while concentrating its military forces in the east of the country, to keep a reserve force capable of redeploying rapidly elsewhere in the country. The Council decided to grant MONUSCO the mandate to, *inter alia*, and in this order of priority: protect civilians, humanitarian personnel and United Nations personnel and facilities; support efforts to bring perpetrators to justice, including by establishing Prosecution Support Cells; implement the United Nations system-wide protection strategy in the Democratic Republic of the Congo; support efforts of the Congolese Government to bring ongoing military operations against the Forces démocratiques de libération du Rwanda (FDLR), the Lord's Resistance Army (LRA) and other armed groups, to a completion; coordinate strategies with other United Nations missions in the region for enhanced information-sharing in light of the attacks by the LRA, and, at the request of the Congolese Government, provide logistical support for regional military operations conducted against the LRA in the Democratic Republic of the Congo; support the efforts of the Congolese authorities to strengthen and reform security and

[8] For more information about MINURSO, see the website of MINURSO at http://www.un.org/en/peacekeeping/missions/minurso and Report of the Secretary-General on the situation concerning Western Sahara, dated 6 April 2010 (S/2010/175).

[9] For more information about MONUSCO, see the website of MONUSCO at http://monusco.unmissions.org; Thirty-first report of the Secretary-General on the United Nations Organization Mission in the Democratic Republic of the Congo, dated 30 March 2010 (S/2010/164); Report of the Secretary-General on the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo, dated 8 October 2010 (S/2010/512); and Report of the Security Council mission to the Democratic Republic of the Congo (13 to 16 May 2010), dated 30 June 2010 (S/2010/288).

judicial institutions; assist the Government in strengthening its military capacity, including military justice and military police; support the reform of the police; develop and implement a multi-year joint United Nations justice support programme; provide technical and logistical support for the organization of national and local elections; and assist the Government in enhancing its demining capacity.

In a letter dated 7 June 2010 addressed to the President of the Security Council, the Secretary-General informed the Security Council of his intention to appoint Roger A. Meece as the Special Representative for the Democratic Republic of the Congo and Head of the MONUC.[10]

f. Liberia

The United Nations Mission in Liberia (UNMIL) was established by Security Council resolution 1509 (2003) of 19 September 2003.[11] The Security Council decided by resolution 1938 (2010) of 15 September 2010, while acting under Chapter VII, to extend the mandate of UNMIL for one year, until 30 September 2011.

In resolution 1938 (2010), the Security Council noted that UNMIL had completed the third stage of its drawdown and welcomed that the planning process to transfer security responsibilities from UNMIL to national authorities had been initiated. In the same resolution, acting under Chapter VII, the Council authorized UNMIL to assist the Liberian Government with the 2011 general presidential and legislative elections and endorsed the Secretary-General's recommendation that the conduct of free, fair and peaceful elections be a core benchmark for UNMIL's future drawdown.

g. Côte d'Ivoire

The United Nations Operation in Côte d'Ivoire (UNOCI) was established by Security Council resolution 1528 (2004) of 27 February 2004.[12] By resolutions 1911 (2010) of 28 January 2010, 1924 (2010) of 27 May 2010, 1933 (2010) of 30 June 2010, and 1962 (2010) of 20 December 2010, the Security Council, acting under Chapter VII, decided to renew the mandate of UNOCI and of the French forces which support it, as determined in resolution 1739 (2007), until 31 May, 30 June, 30 December 2010, and 30 June 2011, respectively.

In resolution 1911 (2010) of 28 January 2011, the Council, acting under Chapter VII, expressed its intention to review in full by 31 May 2010, *inter alia*, the mandate of UNOCI and the authorization provided to the French forces which support it. Recommendations for a revised mandate of UNOCI were included in the report of the Secretary-General of 20

[10] Letter dated 7 June 2010 from the Secretary-General addressed to the President of the Security Council (S/2010/303).

[11] For more information about UNMIL, see the website of UNMIL at http://www.unmil.org; Twentieth progress report of the Secretary-General on the United Nations Mission in Liberia, dated 17 February 2010 (S/2010/88); and Twenty-first progress report of the Secretary-General on the United Nations Mission in Liberia of 11 August 2010 (S/2010/429).

[12] For more information about ONUCI, see the website of ONUCI at http://www.onuci.org and progress reports of the Secretary-General on the United Nations Operation in Côte d'Ivoire, dated 7 January 2010 (S/2010/15), 20 May 2010 (S/2010/245), 18 October 2010 (S/2010/537) and 23 November 2010 (S/2010/600).

May 2010.[13] The revised mandate of UNOCI was decided upon by the Council in resolution 1933 (2010). Accordingly, UNOCI was mandate to, *inter alia*: monitor the armed groups; protect civilians; monitor the arms embargo; provide assistance in the field of human rights; support the organization of open, free, fair and transparent elections; support the Integrated Command Center with disarmament, demobilization, storage of weapons and reintegration of former combatants; support the redeployment of Ivorian state administration and Justice throughout the country; and protect United Nations personnel.

In a letter dated 14 September 2010 from the Secretary-General addressed to the President of the Security Council,[14] the Secretary-General recommended a temporary increase of UNOCI's authorized military and police personnel. In resolution 1942 (2010) of 29 September 2010, the Council decided to authorize an increase in personnel from 8,650 to 9,150, for a period of up to six months. This temporary increase of up to 500 additional personnel was extended until 31 March 2011 in resolution 1962 (2010).

In resolution 1946 (2010) of 15 October 2010, the Council, acting under Chapter VII, underlined that it was fully prepared to impose targeted measures against, *inter alia*, persons who are a threat to the peace and national reconciliation process in Côte d'Ivoire or who attack or obstruct the action of UNOCI or of the French forces which support it.

The Security Council, acting under Chapter VII, authorized the Secretary-General in resolution 1951 (2010) of 24 November 2010, to temporarily redeploy from UNMIL to UNOCI for a period of no more than four weeks a maximum of three infantry companies and an aviation unit comprised of two military utility helicopters. This temporary redeployment from UNMIL to UNOCI was extended by up to four weeks in resolution 1962 (2010).

h. Haiti

The United Nations Stabilization Mission in Haiti (MINUSTAH) was established by Security Council resolution 1542 (2004) of 30 April 2004.[15] By its resolution 1944 (2010) of 14 October 2010, the Security Council, acting under Chapter VII of the Charter of the United Nations, decided to extend the mandate of MINUSTAH as contained in its resolutions 1542 (2004), 1608 (2005), 1702 (2006), 1743 (2007), 1780 (2007), 1840 (2008), 1892 (2009), 1908 (2010) and 1927 (2010) until 15 October 2011, with the intention of further renewal.

In resolution 1908 (2010) of 19 January 2010, the Security Council endorsed the recommendation by the Secretary-General to increase the overall force levels of MINUSTAH to support the immediate recovery, reconstruction and stability efforts after the earthquake on 12 January 2010. In the same resolution, the Council decided that MINUSTAH will consist of a military component of up to 8,940 troops of all ranks and of a police com-

[13] Twenty-fourth report of the Secretary-General on the United Nations Operation in Côte d'Ivoire, dated 20 May 2010 (S/2010/245).

[14] Letter dated 14 September 2010 from the Secretary-General addressed to the President of the Security Council (S/2010/485).

[15] For more information about MINUSTAH, see, the website of MINUSTAH at http://minustah.org and Reports of the Secretary-General on the United Nations Stabilization Mission in Haiti, dated 22 February 2010 (S/2010/200) and 1 September 2010 (S/2010/446).

ponent of up to 3,711 police. A further 680 police were authorized by the Council, acting under Chapter VII, in resolution 1927 (2010) of 4 June 2010.

On 14 October 2010, the Security Council further decided by resolution 1944 (2010) to extend the mandate of MINUSTAH as contained in the resolutions mentioned above until 15 October 2011, with the intention of further withdrawal. It further decided to maintain the current Mission overall force levels, which consists of a military component of up to 8940 troops of all ranks and of a police component of up to 4391 police and called on the Secretary-General to conduct a comprehensive assessment of the security environment following the election and transfer of power to a new government in 2011, as contained in paragraph 56 of the Secretary-General's report.

In a letter dated 13 January 2010 from the Secretary-General addressed to the President of the Security Council,[16] the Secretary-General informed the Council of his intention to immediately deploy Edmond Mulet, Assistant Secretary-General, Office of Operations, Department of Peacekeeping Operations, to serve as the Acting Special Representative and Head of MINUSTAH.

i. The Sudan

The United Nations Mission in the Sudan (UNMIS) was established by Security Council resolution 1590 (2005) on 24 March 2005.[17] On 29 April 2010, the Security Council decided, by resolution 1919 (2010), to extend the mandate of UNMIS until 30 April 2011, with the intention to renew it for further periods as may be required.

In resolution 1919 (2010), the Council called upon UNMIS to implement a mission-wide civilian protection strategy, comprehensively throughout the mission area, including implementation of tribal conflict resolution mechanisms.

j. Timor-Leste

The United Nations Integrated Mission in Timor-Leste (UNMIT) was established by Security-Council resolution 1704 (2006) of 25 August 2006.[18] The mandate of UNMIT was extended by Security Council resolution 1912 (2010) of 26 February 2010, until 26 February 2011.

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[16] Letter dated 13 January 2010 from the Secretary-General addressed to the President of the Security Council (S/2010/23).

[17] For more information about UNMIS, see the website of UNMIS at http://unmis.unmissions.org; Reports of the Secretary-General on the Sudan, dated 19 January 2010 (S/2010/31), 19 July 2010 (S/2010/388), 14 October 2010 (S/2010/528) and 31 December 2010 (S/2010/681); and Report of the Secretary-General on the United Nations Mission in the Sudan, dated 5 April 2010 (S/2010/168 and S/2010/168/Add.1).

[18] For more information about UNMIT, see the website of UNMIT at http://unmit.unmissions.org; and Report of the Secretary-General on the United Nations Integrated Mission in Timor-Leste (for the period from 24 September 2009 to 20 January 2010), dated 12 February 2010 (S/2010/85); and Report of the Secretary-General on the United Nations Integrated Mission in Timor-Leste (for the period from 21 January to 20 September 2010), dated 13 October 2010 (S/2010/522).

k. 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.[19] On 30 July 2010, the Security Council decided, by resolution 1935 (2010), to extend the mandate of UNAMID for a further 12 months, until 31 July 2011. In the same resolution, the Council underlined the need for UNAMID to make full use of its mandate and capabilities, giving priority in decisions about the use of available capacity and resources to (a) the protection of civilians across Darfur, and (b) ensuring safe, timely and unhindered humanitarian access, the safety and security of humanitarian personnel and humanitarian activities.

l. 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.[20] In resolutions 1913 (2010) of 12 March 2010, 1922 (2010) of 12 May 2010 and 1923 (2010) of 25 May 2010, the Security Council extended the mandate of MINURCAT until 15 May, 26 May, and 31 December 2010, respectively. MINURCAT completed its mandate on 31 December 2010.[21]

In resolution 1923 (2010), the Security Council also called upon the Secretary-General to implement the initial withdrawal of the exceeding number of troops by 15 July 2010 and the final withdrawal of the remaining troops beginning on 15 October 2010. The Council further called upon the Secretary-General to complete withdrawal of all uniformed and civilian MINURCAT components, other than those required for the mission's liquidation.

Furthermore, the Council decided that MINURCAT should have a mandate in eastern Chad and north-eastern Central African Republic, *inter alia*: to support, within its capabilities, efforts aimed at strengthening the capacity of the Government of Chad and civil society through training in international human rights standards, and efforts to put an end to recruitment and use of children by armed groups; and to assist the Government of Chad in the promotion of the rule of law.

Specific mandates were given to MINURCAT based on area of operation. In eastern Chad, until the final withdrawal of its military personnel on 15 October 2010, MINURCAT was authorized by the Council to, *inter alia*: provide security for United Nations personnel; provide escort for United Nations military personnel carrying out support functions; execute operations of a limited character in order to extract United Nations personnel

[19] For more information about UNAMID, see the website of UNAMID at http://unamid.unmissions.org and Reports of the Secretary-General on the African Union-United Nations Hybrid Operation in Darfur, dated 29 January 2010 (S/2010/50), 28 April 2010 (S/2010/213), 14 July 2010 (S/2010/382) and 18 October 2010 (S/2010/543).

[20] For more information about MINURCAT, see the website of MINURCAT at http://minurcat.unmissions.org and Reports of the Secretary-General on the United Nations Mission in the Central African Republic and Chad, dated 29 April 2010 (S/2010/217), 30 July 2010 (S/2010/409), 14 October 2010 (S/2010/529) and 1 December 2010 (S/2010/611).

[21] See below, subsection (iii) of this section.

and humanitarian workers in danger; and provide medical evacuation support for United Nations personnel. In north-eastern Central African Republic, MINURCAT was authorized to, *inter alia*; contribute to the creation of a more secure environment; execute operations of a limited character in order to extract United Nations personnel and humanitarian workers in danger; and protect United Nations personnel.

(iii) *Peacekeeping missions or operations concluded in 2010*

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. MINURCAT completed its mandate on 31 December 2010, in accordance with resolution 1923 (2010) of 25 May 2010 and at the request of the Chadian Government, which had pledged full responsibility for protecting civilians on its territory.

(*b*) Political and peacebuilding missions

(i) *Political and peacebuilding missions established in 2010*

The Central African Republic

On 1 January 2010, the United Nations Integrated Peacebuilding Office in the Central African Republic (BINUCA) succeeded the United Nations Peacebuilding Office in the Central African Republic (BONUCA), which had been established by the Secretary-General on 15 February 2000.[22] By Statement of the President of 14 December 2010, the Security Council welcomed the extension of the mandate of BINUCA for the period of one year up until 31 December 2011.[23]

The mandate of BINUCA had been set out by the Security Council in the Statement of its President of 7 April 2009.[24] The Council had welcomed the recommendation by the Secretary-General, in his letter dated 3 March 2009, to establish BINUCA to succeed BONUCA.[25] It had noted with satisfaction that BINUCA would perform the following tasks: to assist national and local efforts in implementing the dialogue outcomes, in particular through support for governance reforms and electoral processes; to assist in the successful completion of the disarmament, demobilization and reintegration process and the reform of security sector institutions, and support activities to promote the rule of law; to support efforts to restore State authority in the provinces; to support efforts to enhance national human rights capacity and promote respect for human rights and the rule of law, justice and accountability; to closely coordinate with and support the work of the Peacebuilding Commission, as well as the implementation of the Strategic Framework for Peacebuilding and projects supported

[22] Ninth report of the Secretary-General on the United Nations Mission in the Central African Republic, dated 14 January 2000 (S/2000/24), and Statement by the President of the Security Council, 10 February 2000 (S/PRST/2000/5).

[23] Statement by the President of the Security Council, 14 December 2010 (S/PRST/2010/26).

[24] Statement by the President of the Security Council, 7 April 2009 (S/PRST/2009/5).

[25] Letter dated 3 March 2009 from the President of the Security Council addressed to the Secretary-General (S/2009/128).

through the Peacebuilding Fund; and to exchange information and analysis with the United Nations Mission in the Central African Republic and Chad (MINURCAT) on emerging threats to peace and security in the region. The Security Council had also requested the Secretary-General to ensure that the integrated office undertakes to help ensure that child protection is properly addressed in the implementation of the Comprehensive Peace Agreement and the DDR process, including by supporting the monitoring and reporting mechanism established according to resolutions 1539 (2004) and 1612 (2005).

(ii) *Changes in the mandate and/or extensions of the time limits of ongoing political and peacebuilding missions in 2010*

a. Somalia

In 2010, two missions were active in Somalia. First, the United Nations Political Office for Somalia (UNPOS), created by the Secretary-General on 15 April 1995, aims, in accordance with its revised mandate in resolution 1863 (2009) of 16 January 2009, to advance the cause of peace and reconciliation through contacts with Somali leaders, civic organizations and the States and organizations concerned.

Second, the United Nations Support Office for AMISOM (UNSOA) is a field support operation led by the United Nations Department of Field Support (DFS). Its mandate, as provided by Security Council resolution 1863 (2009), is to deliver a logistics capacity support package to AMISOM (African Union Mission in Somalia) critical in achieving its operational effectiveness and in preparation for a possible United Nations peacekeeping operation.

By resolution 1910 (2010) of 28 January 2010,[26] the Security Council, acting under Chapter VII of the Charter of the United Nations, requested the Secretary-General to expedite the proposed deployment of elements of 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.[27]

On 22 December 2010, the Security Council, acting under Chapter VII of the Charter of the United Nations, adopted resolution 1964 (2010), in which it requested the Secretary-General to continue to provide a logistical support package for AMISOM called for by resolution 1863 (2009) for a maximum of 12,000 AMISOM troops, comprising equipment and services, including public information support, but not including the transfer of funds, as described in the Secretary-General's letter to the Security Council,[28] until 30 September 2011.

In the same resolution, the Security Council recalled its statement of intent regarding the establishment of a United Nations peacekeeping operation as expressed in resolution 1863 (2009); noted that any decision to deploy such an operation would take into account,

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[26] See below, subsection f of this chapter.

[27] Report of the Secretary-General on Somalia pursuant to Security Council resolution 1863 (2009), dated 16 April 2009 (S/2009/210).

[28] Letter dated 30 January 2009 from the Secretary-General to the President of the Security Council (S/2009/60).

inter alia, the conditions set out in the Secretary-General's report dated 16 April 2009;[29] and requested the Secretary-General to take the steps identified in paragraphs 82–86 of his report, subject to the conditions in this report. Furthermore, the Council welcomed the steps taken by UNPOS and other United Nations offices and agencies, including the United Nations Support Office for AMISOM (UNSOA), to increase the United Nations presence in Somalia, and encouraged further United Nations deployments to Somalia, in particular Mogadishu, consistent with the security conditions, as outlined in his report.[30]

b. Afghanistan

The United Nations Assistance Mission in Afghanistan (UNAMA) was established by Security Council resolution 1401 (2002) of 28 March 2002. On 22 March 2010, the Security Council decided by resolution 1917 (2010) to extend the mandate of UNAMA until 23 March 2011.[31]

c. Iraq

The United Nations Mission for Iraq (UNAMI) was established by Security Council resolution 1500 (2003) of 14 August 2003. By resolution 1936 (2010), adopted on 5 August 2010, the Security Council decided to extend the mandate of UNAMI until 31 July 2011.[32]

d. Nepal

The United Nations Political Mission in Nepal (UNMIN) was established pursuant to Security Council resolution 1740 (2007) of 23 January 2007. By resolution 1909 (2010) of 21 January 2010, the Security Council decided, in line with a request from the Government of Nepal[33] and the Secretary-General's recommendations,[34] to renew the mandate of UNMIN until 15 May 2010, 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 decided that that, working with the parties, UNMIN should make the necessary arrangements with the Government of Nepal for its withdrawal, including handing over any residual monitoring responsibilities by 15 May 2010.

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[29] Report of the Secretary-General on Somalia pursuant to Security Council resolution 1863 (2009), dated 16 April 2009 (S/2009/210).

[30] Report of the Secretary General on Somalia, dated 9 September 2010 (S/2010/447).

[31] For more information about UNAMA, see the website of UNAMA at http://unama.unmissions.org; Reports of the Secretary-General on the situation in Afghanistan and its implications for international peace and security, dated 10 March 2010 (A/64/705–S/2010/127), 14 September 2010 (A/64/911–S/2010/463) and 10 December 2010 (A/65/612–S/2010/630); and Report of the Secretary-General pursuant to paragraph 40 of resolution 1917 (2010), dated 16 June 2010 (S/2010/318).

[32] For more information about the activities of UNAMI, see the website of UNAMI at http://www.uniraq.org.

[33] Letter from the Government of Nepal, annex to Letter dated 14 January 2010 from the Secretary-General addressed to the President of the Security Council (S/2010/25).

[34] Report of the Secretary-General on the request of Nepal for United Nations assistance in support of its peace process, dated 7 January 2010 (S/2010/17).

By resolution 1921 (2010) of 12 May 2010, the Security Council further renewed the mandate of UNMIN until 15 September 2010 and underlined that the current arrangements were conceived as temporary measures, rather than long-term solutions. It decided that, working with the parties, UNMIN should immediately begin to make the necessary arrangements for its withdrawal, including handing over any residual monitoring responsibilities by 15 September 2010.

On 15 September 2010, the Security Council once more decided, by resolution 1939 (2010), in line with the request from the Government of Nepal[35], to renew the mandate of UNMIN until 15 January 2011. It further decided, in line with the request from the Government of Nepal, that UNMIN's mandate would terminate on 15 January 2011, after which date UNMIN would leave Nepal.

e. 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 29 September 2010, the Security Council decided by resolution 1941 (2010) to extend the mandate of UNIPSIL until 15 September 2011.[36]

f. Guinea-Bissau

The United Nations Integrated Peacebuilding Office in Guinea-Bissau (UNIOGBIS) was established by Security Council resolution 1876 (2009) of 26 June 2009, to succeed the United Nations Peacebuilding Support Office in Guinea-Bissau (UNOGBIS). On 23 November 2010, the Security Council adopted resolution 1949 (2010), by which it decided to extend the mandate of the UNIOGBIS until 31 December 2011.

(iii) *Other ongoing political and peacebuilding missions in 2010*

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,[37] continued to operate throughout 2010.[38]

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[35] Letter dated 14 September 2010 from the Permanent Representative of Nepal to the United Nations addressed to the Secretary-General, annex to Letter dated 14 September 2010 from the Secretary-General addressed to the President of the Security Council (S/2010/474).

[36] For more information about the activities of UNIPSIL, see the website of UNIPSIL at http://unipsil.unmissions.org.

[37] Exchange of letters between the Secretary-General and the Security Council, dated 10 September 1999 (S/1999/983) and 16 September 1999 (S/1999/984).

[38] For more information about UNSCO, see the website of UNSCO at http://www.unsco.org.

b. Lebanon

The Secretary-General decided in 2000 to appoint a senior official to serve as his representative in Lebanon.[39] The title of the representative was subsequently changed to Personal Representative for southern Lebanon and to Special Coordinator for Lebanon, in 2005[40] and 2007,[41] respectively. The Special Coordinator for Lebanon continued to operate throughout 2010.[42]

c. West Africa

The United Nations Office for West Africa (UNOWA), originally established by the Secretary-General in 2002,[43] with subsequent extensions of its mandate in 2004[44] and 2007,[45] continued to operate through 2010. The Secretary-General submitted two reports on UNOWA in 2010.[46] On 20 December 2010, the Security Council agreed to extend the mandate of the Office for a further period of three years, from 1 January 2011 to 31 December 2013.[47]

d. United Nations Regional Office for Central Africa

By letter dated 30 August 2010, the President of the Security Council informed the Secretary-General that the Council welcomed the Secretary-General's intention to establish a United Nations Regional Office for Central Africa (UNOCA) in Libreville, Gabon.[48] The core functions of the Office would be: cooperating with the Economic Community of Central African States (ECCAS), the Central African Economic and Monetary Community (CAEMC), the International Conference on the Great Lakes Region (ICGLR), the Economic Community of the Great Lakes Countries (CEPGL) and other key partners and assisting them, as appropriate, in their promotion of peace and stability in the broader

[39] Report of the Secretary-General on the United Nations Interim Force in Lebanon (for the period from 17 January to 17 July 2000), dated 20 July 2000 (S/2000/718).

[40] Letter dated 29 March 2005 from the Secretary-General to the President of the Security Council (S/2005/216).

[41] Letter dated 8 February 2007 from the Secretary-General to the President of the Security Council (S/2007/85).

[42] For more information about the activities of the Office of the United Nations Special Coordinator for Lebanon (UNSCOL), see the website of UNSCOL at http://unscol.unmissions.org.

[43] Exchange of letters between the Secretary-General and the President of the Security Council dated 26 November 2001 (S/2001/1128) and 29 November 2001 (S/2001/1129).

[44] Exchange of letters between the Secretary-General and the President of the Security Council dated 4 October 2004 (S/2004/797) and 25 October 2004 (S/2004/858).

[45] Exchange of letters between the Secretary-General and the President of the Security Council dated 28 November 2007 (S/2007/753) and 21 December 2007 (S/2007/754).

[46] Reports of the Secretary-General on the United Nations Office for West Africa, dated 21 June 2010 (S/2010/324) and 3 December 2010 (S/2010/614). For more information about the activities of UNOWA, see, the website of UNOWA at http://unowa.unmissions.org.

[47] Exchange of letters between the Secretary-General and the President of the Security Council dated 14 December 2010 (S/2010/660) and 20 December 2010 (S/2010/661).

[48] Exchange of letters between the Secretary-General and the President of the Security Council dated 11 December 2009 (S/2009/697) and 30 August 2010 (S/2010/457).

Central African subregion; carrying out good offices roles and special assignments in countries of the subregion, on behalf of the Secretary-General, including in the areas of conflict prevention and peacebuilding efforts; strengthening the Department of Political Affairs' capacity to advise the Secretary-General on matters relating to peace and security in the region; enhancing linkages in the work of the United Nations and other partners in the subregion, with a view to promoting an integrated subregional approach and facilitating coordination and information exchange, with due regard to specific mandates of United Nations organizations as well as peacekeeping operations and peacebuilding support offices; and reporting to Headquarters on developments of subregional significance.

The Security Council believed that it would be appropriate for the proposed office to be established for an initial period of two years, with a review of its mandate after 18 months. The Council welcomed regular information from the Secretary-General about the activities of the office, once established, and its impact on the ground, and expressed its wish to receive an initial report six months after the office became fully operational.

(iv) *Political and peacebuilding missions concluded in 2010*

Burundi

The United Nations Integrated Office in Burundi (BINUB) was established, for an initial period of 12 months commencing on 1 January 2007, by Security Council resolution 1719 (2006) of 25 October 2006 and its mandate was subsequently renewed by resolutions 1791 (2007), 1858 (2008) and 1902 (2009). The Security Council did not extend the mandate of BINUB beyond 31 December 2010. By resolution 1959 (2010) of 16 December 2010 it requested the Secretary-General to establish the United Nations Office in Burundi (BNUB), as recommended in his report,[49] as a significantly scaled-down United Nations presence, for an initial period of 12 months beginning on 1 January 2011, to support the progress achieved in recent years by all national stakeholders in consolidating peace, democracy and development in Burundi. The Council welcomed the Secretary-General's recommendation that BNUB should be headed by a Special Representative of the Secretary-General assisted by a Deputy Special Representative who would serve as United Nations Resident Coordinator and Humanitarian Coordinator, as well as Resident Representative of the United Nations Development Programme.

In the same resolution, the Council requested that BNUB focus on and support the Government of Burundi in the following areas: strengthening the independence, capacities and legal frameworks of key national institutions, in particular judicial and parliamentary institutions, in line with international standards and principles; promoting and facilitating dialogue between national actors and supporting mechanisms for broad-based participation in political life, including for the implementation of development strategies and programmes in Burundi; supporting efforts to fight impunity, particularly through the establishment of transitional justice mechanisms to strengthen national unity, promote justice and promote reconciliation within Burundi's society, and providing operational support to the functioning of these bodies; promoting and protecting human rights,

[49] Seventh report of the Secretary-General on the United Nations Integrated Office in Burundi, dated 30 November 2010 (S/2010/608).

including strengthening national capacities in that area, as well as national civil society; ensuring that all strategies and policies with respect to public finance and the economic sector, in particular the next Poverty Reduction Strategy Paper (PRSP), have a focus on peacebuilding and equitable growth, addressing specifically the needs of the most vulnerable population, and advocating for resource mobilization for Burundi; and providing support to Burundi as Chair of the East African Community in 2011 as well as providing advice, as requested, on regional integration issues.

(*c*) Other bodies

(i) *Cameroon-Nigeria Mixed Commission*

On 15 November 2002, the Secretary-General established the Cameroon-Nigeria Mixed Commission, at the request of the Presidents of Nigeria and Cameroon, to facilitate the implementation of the 10 October 2002 ruling of the International Court of Justice on the Cameroon-Nigeria boundary dispute. The mandate of the Mixed Commission includes supporting the demarcation of the land boundary and delineation of the maritime boundary, facilitating the withdrawal and transfer of authority along the boundary, addressing the situation of affected populations and making recommendations on confidence-building measures.

In 2010, the Mixed Commission continued to support the formulation of confidence-building measures to guarantee the security and welfare of affected populations and to promote initiatives to enhance trust between the two Governments and their peoples. By exchange of letters dating 7 and 10 December 2010, the Security Council approved resources from the regular budged for the Mixed Commission for the period from 1 January to 31 December 2011.[50]

(ii) *Assassination of former Pakistani Prime Minister Mohtarma Benazir Bhutto*

In February 2009, the Secretary-General established the United Nations Commission of Inquiry into the facts and circumstances of the assassination of former Pakistani Prime Minister Mohtarma Benazir Bhutto.[51] The Commission commenced its activities on 1 July 2009 with a mandate of six months. By exchange of letters of 6 January 2010, the Security Council took note of an extension of the Commission's mandate for an additional three months.[52]

The Commissioners travelled to Pakistan in July and September 2009 and February 2010 in furtherance of its inquiry. Commission staff travelled frequently to Pakistan during the mandate period. The Commission conducted more than 250 interviews with Pakistanis and others both inside and outside Pakistan and received significant support from the Government of Pakistan.

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[50] Exchange of letters between the Secretary-General and the President of the Security Council dated 7 December 2010 (S/2010/637) and 10 December 2010 (S/2010/638).

[51] Exchange of letters between the Secretary-General and the President of the Security Council dated 3 February 2009 (S/2009/67 and S/2009/68).

[52] Exchange of letters between the Secretary-General and the President of the Security Council dated 2 February 2009 (S/2010/7) and 3 February 2009 (S/2009/68).

On 30 March 2010 the Commission presented its report to the Secretary-General, who submitted it to the Security Council by letter dated 15 April 2010.[53]

(iii) *Flotilla incident of 31 May 2010*

On 2 August 2010, the Secretary-General established, in light of the statement of the President of the Security Council dated 1 June 2010,[54] a Panel of Inquiry on the flotilla incident that occurred on 31 May 2010, when Israeli armed forces attacked a flotilla of ships bound for Gaza. The Panel did not submit a report in 2010.

By resolution 14/1 of 2 June 2010, the Human Rights Council established an independent international fact-finding mission to investigate violations of international law, including international humanitarian and human rights law, resulting from the Israeli attacks on the flotilla of ships carrying humanitarian assistance to Gaza. The mission commenced its activities on 9 August 2010 in Geneva. On 27 September 2010, the mission submitted its report to the Human Rights Council.[55] By resolution 15/1 of 29 September 2010, the Human Rights Council welcomed the report and endorsed the conclusions of the mission.

(iv) *Panel on the Referenda in the Sudan*

On 17 September 2010, the Secretary-General established a three-member panel to monitor and assess the referendum processes for Southern Sudan and the Abyei area, including the political and security situation on the ground.[56] The panel would also engage the parties at the appropriate level to take corrective measures and, in close consultation with the Secretary-General, issue public statements on the referenda. It would be supported by field reporting officers, their coordinators and other liaison officers located in Northern and Southern Sudan. It would be distinct from the United Nations Mission in the Sudan and would report to the Secretary-General through the Department of Political Affairs.

(*d*) Missions of the Security Council

(i) *Democratic Republic of the Congo*

In a letter dated 4 May 2010, the President of the Security Council informed the Secretary-General of the Council's decision to send a mission to the Democratic Republic

[53] Report of the United Nations Commission of Inquiry into the facts and circumstances of the assassination of the former Prime Minister of Pakistan, Mohtarma Benazir Bhutto, transmitted by Letter dated 15 April 2010 from the Secretary-General addressed to the President of the Security Council, dated 19 April 2010 (S/2010/191).

[54] Statement of the President of the Security Council, 1 June 2010 (S/PRST/2010/9).

[55] Report of the international fact-finding mission to investigate violations of international law, including international humanitarian and human rights law, resulting from the Israeli attacks on the flotilla of ships carrying humanitarian assistance, dated 27 September 2010 (A/HRC/15/21).

[56] Exchange of letters between the Secretary-General and the President of the Security Council dated 17 September 2010 (S/2010/491) and 21 September 2010 (S/2010/492).

of the Congo from 13 to 16 May 2010.[57] The mission was conducted as planned and a report on the mission was submitted on 30 June 2010.[58]

According to its terms of reference,[59] the mission's central objective was to discuss the mandate and configuration of the United Nations Organization Mission in the Democratic Republic of the Congo (MONUC) and the future of the United Nations presence in the Democratic Republic of the Congo. To this end, the mission would: recall the primary responsibility of the Security Council for the maintenance of international peace and security and commitment to the sovereignty, territorial integrity and political independence of all States in the Great Lakes region; express the strong support of the Security Council to the improvement of relations among the countries of the region and encourage them to continue reinforcing cooperation in all fields, especially on political, economic and security issues, in order to guarantee the long-term stabilization of the Great Lakes region; 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, as means to consolidate peace and security; reiterate that all parties should contribute to stabilizing the eastern part of the Democratic Republic of the Congo, encourage Rwandan and Congolese authorities to work together and agree on a clear set of end-of-state objectives on the Forces Démocratiques de Libération du Rwanda (FDLR), in the framework of a multidimensional approach, and recall the importance of full implementation of relevant Security Council resolutions, including resolution 1896 (2009), as a means to stabilize the situation; emphasize the support of the Council for action against the Lord's Resistance Army (LRA), invite Governments in the region to develop a regional strategy to address the violations and abuses committed against civilians by the LRA, taking into account existing regional mechanisms as well as the need to effectively protect the affected population, and discuss the role of United Nations peacekeeping missions in the LRA-affected areas; recognize the primary responsibility of the Government of the Democratic Republic of the Congo to consolidate peace and stability, promote recovery and development in the country, protect civilians, develop sustainable security sector institutions and express the continued support of the Council in this regard; reaffirm the commitment of the Security Council to MONUC and discuss the future reconfiguration of MONUC, in particular the critical tasks that need to be accomplished before MONUC can envisage its drawdown without triggering a relapse into instability, taking into account the discussions of the Technical Assessment Mission with the Congolese authorities in March 2010; reiterate the continuing concerns of the Council about the protection of civilians, discuss the implementation of Security Council resolution 1906 (2009), address the situation of internally displaced civilians and advocate for respect for human rights and international humanitarian law, and for the need to address sexual-violence and child-protection issues, bearing in mind the conclusions of the Security Council Working Group on children and armed conflict; recall the importance of the fight against impunity, *inter*

[57] Letter dated 4 May 2010 from the President of the Security Council addressed to the Secretary-General (S/2010/187/Add.1).

[58] Report of the Security Council mission to the Democratic Republic of the Congo (13 to 16 May 2010), dated 30 June 2010 (S/2010/288).

[59] See annex to Letter dated 14 April 2010 from the President of the Security Council addressed to the Secretary-General (S/2010/187).

alia by strengthening the capacity of the judicial and correctional systems, and reiterate its recognition of the interrelated nature of the effective protection of civilians, reduction and removal of the threat of armed groups, and comprehensive and sustainable security sector reform; review the progress and discuss with the Congolese authorities their plans for a comprehensive and sustainable reform of the security sector, in particular the implementation of the National Plan for the reform of the Army as well as the Action Plans to reform the police and the National Action Plan for the Reform of the Justice System, and the role of the United Nations and the wider international community in support of their implementation; get updates on operation Amani Leo and the cooperation between the Armed Forces of the Democratic Republic of the Congo (FARDC) and MONUC against armed groups, and to reaffirm that all military operations should be carried out in accordance with international humanitarian, human rights and refugee law, as set out in the mandate of MONUC; reiterate 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 elections; and draw insights from the experience of MONUC that can inform the Council members on current and future peacekeeping operations.

(ii) *Afghanistan*

In a letter dated 14 June 2010, the President of the Security Council informed the Secretary-General of the Council's intention to send a mission to Afghanistan in June 2010.[60] The terms of reference of the mission were subsequently approved by the Council and the Council reported on its mission on 1 November 2010.[61]

In accordance with the its terms of reference, the Council's mission sought: to reaffirm the Security Council's continued support for the Government and people of Afghanistan as they rebuild their country, strengthen the foundations of sustainable peace and constitutional democracy and assume their rightful place in the community of nations; to review the progress made by the Government of Afghanistan, with the assistance of the international community, including through capacity-building initiatives, in addressing the interconnected challenges in the areas of security, governance, rule of law, human rights, women's rights and the empowerment of women, the protection of children affected by armed conflict, economic and social development, regional cooperation and counter-narcotics; to assess the status of implementation of relevant Security Council resolutions, in particular resolutions 1806 (2008), 1868 (2009) and 1917 (2010), as well as of mutual pledges and commitments made by the participants to the London and Istanbul conferences held in 2010, and looking ahead to the Kabul conference; to underline the central and impartial role that the United Nations continues to play in promoting peace and stability in Afghanistan by leading the civilian efforts of the international community and to express strong support for the ongoing efforts of the Secretary-General, including regarding staff security, and of his new Special Representative for Afghanistan, to reiterate the priorities

[60] Letter dated 14 June 2010 from the President of the Security Council addressed to the Secretary-General (S/2010/235).

[61] Report of the Security Council Mission to Afghanistan, 21 to 24 June 2010, dated 1 November 2010 (S/2010/564).

set out by the Security Council in its resolution 1917 (2010) and to display solidarity with the women and men of the United Nations Assistance Mission in Afghanistan (UNAMA); to review the implementation of the key coordinating role assigned to UNAMA and the Special Representative of the Secretary-General by the Security Council in its resolution 1917 (2010), taking into account the need for a comprehensive approach and the principle of reinforcing the transition towards Afghan ownership and leadership; to review efforts by the Afghan authorities, in support of an Afghan-led development and stabilization process with the assistance of the international community, to address the threat to the security and stability of Afghanistan posed by the Taliban/Al-Qaida, illegal armed groups, criminals and those involved in the narcotics trade and in the diversion of chemical precursors; to reaffirm the importance of the effective implementation of measures and application of the procedures introduced by the Security Council in its resolutions 1267 (1999), 1822 (2008) and 1904 (2009) and other relevant resolutions, and to express support for the cooperation of the Government of Afghanistan and UNAMA with the relevant Security Council sanctions committee; to review the humanitarian and development situation in the country, including the efforts to increase the proportion of development aid delivered through the Government of Afghanistan and the role of the provincial reconstruction teams, taking into account the development priorities of Afghanistan; to assess the cooperation, coordination and mutual support between UNAMA and the International Security Assistance Force, including on humanitarian and human rights issues and in supporting the electoral process in accordance with their respective mandates; to assess the preparation of legislative elections to be held later in 2010, as well as their credibility, safety and security; and to reaffirm the crucial importance of advancing regional cooperation and dialogue as an effective means to promote governance, security and development in Afghanistan.

(iii) *Uganda and the Sudan*

In a letter dated 4 October 2010, the President of the Security Council informed the Secretary-General of the intention of the Council to send a mission to Uganda and the Sudan from 4 to 10 October 2010.[62] The Council did not submit a report on the mission in 2010.[63]

The terms of reference for the mission to Uganda[64] specified that the purpose of the mission was: to reiterate the support of the Security Council to the improvement of relations among the countries of the region and to encourage them to strengthen cooperation in all fields; to emphasize the support of the Security Council for action against armed groups in the region, particularly the Lord's Resistance Army; to reiterate the support of the Security Council for the Djibouti Peace Process and for the African Union Mission in Somalia (AMISOM) in the stabilization of Somalia; to stress the firm commitment of the Security Council to the cause of peace in the Sudan, the full implementation of the Com-

[62] Letter dated 4 October 2010 from the President of the Security Council addressed to the Secretary-General (S/2010/509).

[63] The report was published in January 2011: Report of the Security Council mission to Uganda and the Sudan, 4 to 10 October 2010, dated 7 January 2011 (S/2011/7).

[64] See annex to Letter dated 4 October 2010 from the President of the Security Council addressed to the Secretary-General (S/2010/509).

prehensive Peace Agreement[65] and successful negotiation of a comprehensive and inclusive peace agreement for Darfur; and to examine the important contribution by the regional service centre in Entebbe to the work of United Nations missions in the region.

The terms of reference for the mission to the Sudan[66] specified that the purpose of the mission was: to reaffirm the commitment of the Security Council to, and the support of the international community for, the Sudanese parties' full and timely implementation of the Comprehensive Peace Agreement, and to encourage a peaceful, comprehensive and inclusive resolution for the situation in Darfur; to reaffirm the support of the Security Council for the Sudanese parties in working to make unity attractive and in respecting the right to self-determination of the people of South Sudan through credible, peaceful, free and timely referenda on 9 January 2011 that reflect the will of the Sudanese people of these areas and to hold popular consultations, in accordance with the terms of the Comprehensive Peace Agreement, and for all parties and States to respect the outcome; to emphasize the importance of the partnership between the United Nations and the African Union for the international support to the Sudanese peace processes; to express support for the work of the African Union High-level Implementation Panel and the engagement of other regional and international partners of the Sudan; to stress that full and successful implementation of the Comprehensive Peace Agreement is essential to sustainable peace and stability throughout the Sudan, including Darfur, and in the region, and to encourage increased cooperation between the National Congress Party and the Sudan People's Liberation Movement in carrying out their responsibilities to fully implement the Comprehensive Peace Agreement, including through successful and timely completion of negotiations on post-referendum arrangements; to assess ongoing preparations for the referenda, and to reiterate that, regardless of the results, both parties to the Comprehensive Peace Agreement will need to work cooperatively to resolve critical issues and that the United Nations will continue to play an important role in supporting and promoting this dialogue, including through the recently designated United Nations High-Level Panel for the Referenda to be led by President Benjamin Mkapa; to reiterate the support of the Security Council for the United Nations Mission in the Sudan (UNMIS), to assess its performance and review the assistance provided by the Mission, within its current mandate and capabilities, to the implementation of the Comprehensive Peace Agreement and the contingency planning being developed by the Mission in view of the upcoming referenda, as well as the planning developed for its post-referenda presence in the Sudan, and to underline the importance of full and unhindered access for the Mission, to all sites within its area of responsibility; to emphasize the importance of addressing the challenges faced by South Sudan, including insecurity, humanitarian and development needs and capacity building, irrespective of the outcome of the referendum; to emphasize the importance of continuing efforts to support the people of the Sudan, democratic governance, rule of law, accountability, equality, respect for human rights, justice and establishment of the conditions for conflict-affected communities to build strong, sustainable livelihoods; to stress the responsibility of all central and local authorities of the Sudan for the safety of members of peacekeeping missions, humanitarian workers and all working under local contracts; to express the deep concern

[65] Available from http://unmis.unmissions.org/Portals/UNMIS/Documents/General/cpa-en.pdf.

[66] See annex to Letter dated 4 October 2010 from the President of the Security Council addressed to the Secretary-General (S/2010/509).

of the Security Council about the upsurge in violence in Darfur, the number of civilian casualties and victims of sexual and gender-based violence, the recruitment of children by armed groups, the illegal arms flow into Darfur, and the continued restrictions on humanitarian access; to underline its concern for the security of civilians, humanitarian aid workers and peacekeepers in Darfur, and to reiterate the vital importance of the protection of civilians and of maintaining full, safe and unhindered access for humanitarian workers to the population in need of assistance; to reiterate the support of the Security Council for the African Union-United Nations-led peace process and the work of the Joint African Union-United Nations Chief Mediator, Mr. Djibril Bassolé, including the principles guiding the negotiations, and the urgent need for achieving substantive progress; to urge all rebel groups to join the Doha peace process without preconditions or further delay and to call on all parties to immediately cease hostilities and engage constructively in negotiations with a view to finding a lasting peace in Darfur; to reiterate the support of the Council for the African Union-United Nations Hybrid Operation in Darfur (UNAMID) and its personnel, and to reiterate its call on the Government of the Sudan and all relevant parties to cooperate fully with the mission; to assess the performance of UNAMID and to review the challenges it faces in carrying out its mandate, giving priority to the protection of civilians and the facilitation of humanitarian delivery, as well as the priority given to the continuing efforts of UNAMID to promote the engagement of all Darfurian stakeholders in support of and to complement the African Union-United Nations political process in Darfur; to welcome improved relations between the Governments of the Sudan and Chad following the agreement of 15 January 2010 to normalize their bilateral relations and the establishment of a joint border monitoring mechanism, and to encourage continued cooperation and strengthening of relations; and to underline the need to ensure that Security Council resolutions are implemented.

(*e*) Other peace-related matters

Review of United Nations peacebuilding architecture

By resolutions 65/7 and 1947 (2010), both of 29 October 2010, the General Assembly and the Security Council respectively welcomed the report presented by the co-facilitators entitled "Review of the United Nations Peacebuilding Architecture".[67] Both the Assembly and the Council, recognizing the role of the Peacebuilding Commission as a dedicated intergovernmental advisory body to address the needs of countries emerging from conflict towards sustainable peace, requested the Peacebuilding Commission to reflect in its annual reports progress made in taking forward the relevant recommendations of the report and called for a further comprehensive review five years after the adoption of their respective resolutions.

Based on an extensive, open, transparent and inclusive process, including three open-ended informal consultations with the United Nations membership, wide-ranging discussions with key actors in the United Nations system and visits and meetings aimed at

[67] Review of the United Nations peacebuilding architecture, annex to the identical letters dated 19 July 2010 from the Permanent Representatives of Ireland, Mexico and South Africa to the United Nations addressed to the President of the General Assembly and the President of the Security Council (A/64/868–S/2010/393).

consulting over the course of the past six months, co-facilitators from Ireland, Mexico and South Africa drafted recommendations on the role of the Peacebuilding Commission. On the basis of these recommendations, they hoped to see emerging: a more relevant Peacebuilding Commission, with genuine national ownership ensured through capacity-building and greater civil society involvement, simplification of procedures, more effective resource mobilization, deeper coordination with the international financial institutions and a stronger regional dimension; a more flexible Peacebuilding Commission, with a possibility of multi-tiered engagement; a better performing Peacebuilding Commission, with an Organizational Committee that has improved status and focus, and country-specific configurations that are better resourced, more innovative and have a stronger field identity; a more empowered Peacebuilding Commission, with a considerably strengthened relationship with the Security Council, the General Assembly and the Economic and Social Council; a better supported Peacebuilding Commission, with a strongly performing Peacebuilding Support Office that carries greater weight within the Secretariat and a Peacebuilding Fund that is fully attuned to the purposes for which it was created; a more ambitious Peacebuilding Commission, with a more diverse range of countries on its agenda; and a better understood Peacebuilding Commission, with an effective communications strategy that spells out what it has to offer and creates a more positive public image.

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

(i) *Authorization by the Security Council in 2010*

No new actions of Member States were authorized by the Security Council in 2010.

(ii) *Changes in authorization and/or extension of time limits in 2010*

a. Afghanistan

In its resolution 1943 (2010) of 13 October 2010, 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 2011. The Council further authorized Member States participating in ISAF to take all necessary measures to fulfil its mandate.

b. Bosnia and Herzegovina

By resolution 1948 (2010), adopted on 18 November 2010, the Security Council, acting under Chapter VII of the Charter of the United Nations, 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), as established by resolution 1575 (2004) and extended by its resolutions 1639 (2005), 1722 (2006), 1785 (2007), 1845 (2008), and 1895 (2009), under unified command and control, to fulfil its missions in relation to the implementation of

annex 1-A and annex 2 of the Peace Agreement[68] in cooperation with the NATO Headquarters presence. The Council authorized the Member States acting through or in cooperation with NATO to continue to maintain a NATO Headquarters as a legal successor to SFOR, in cooperation with EUFOR, recognizing that EUFOR will have the main peace stabilization role under the military aspects of the Peace Agreement. 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; authorized Member States to take all necessary measures, at the request of either EUFOR or the NATO Headquarters, in defence of the EUFOR or NATO presence respectively, and to assist both organizations in carrying out their missions; recognized the right of both EUFOR and the NATO presence to take all necessary measures to defend themselves from attack or threat of attack; and authorized the Member States acting under the above mandate, in accordance with annex 1-A of the Peace Agreement, to take all necessary measures to ensure compliance with the rules and procedures governing command and control of airspace over Bosnia and Herzegovina with respect to all civilian and military air traffic.

c. Somalia[69]

By resolution 1910 (2010) of 28 January 2010, the Security Council, acting under Chapter VII of the Charter of the United Nations, decided to authorize the Member States of the African Union to maintain the African Union Mission in Somalia (AMISOM) until 31 January 2011 under its existing mandate, as set out in resolution 1772 (2007). It also recalled its statement of intent regarding the establishment of a United Nations peacekeeping operation as expressed in resolution 1863 (2009); noted that any decision to deploy such an operation would take into account, *inter alia,* the conditions set out in the Secretary-General's report dated 16 April 2009;[70] and requested the Secretary-General to take steps identified in paragraphs 82–86 of his report, subject to the conditions in this report.

The Security Council further extended the mandate of AMISOM until 30 September 2011 by resolution 1964 (2010) of 22 December 2010. In the same resolution, it requested the African Union to maintain AMISOM's deployment in Somalia, and to increase its force strength from the current mandated strength of 8,000 troops to 12,000 troops, thereby enhancing its ability to carry out its mandate. It further noted the recommendations on Somalia by the African Union Peace and Security Council of 15 October 2010. The Council underlined its intention to keep the situation on the ground under review and to take into account, in its future decisions on AMISOM, progress in meeting the following objectives: significant progress on the remaining transitional tasks by the Transitional Federal Government, in particular the constitution-making process and the delivery of basic services to the population; adoption of a National Security and Stabilisation Plan and the effective development by the Transitional Federal Government of the National Security Force and

[68] General Framework Agreement for Peace in Bosnia and Herzegovina and the Annexes thereto, attachment to Letter dated 29 November 1995 from the Permanent Representative of the United States of America to the United Nations addressed to the Secretary-General (S/1995/999).

[69] See also, with regard to acts of piracy off the coast of Somalia, subsection (*j*) of this section.

[70] Report of the Secretary-General on Somalia pursuant to Security Council resolution 1863 (2009), dated 16 April 2009 (S/2009/210).

the Somali Police Force, with reinforced chains of command, in the framework of the Djibouti Agreement and in line with this Plan; the continuation and strengthening of reconciliation and political outreach efforts by the Transitional Federal Government, within the framework of the Djibouti Agreement, with all groups willing to cooperate and ready to renounce violence; and, with the support of AMISOM, consolidation of security and stability in Somalia by the Transitional Federal Government on the basis of clear military objectives integrated into a political strategy.

d. The Sudan

The African Union/United Nations Hybrid operation in Darfur (UNAMID) was originally authorized by Security Council resolution 1769 (2007) of 31 July 2007. On 30 July 2010, the Security Council decided, by resolution 1935 (2010), to extend the mandate of UNAMID for a further 12 months, until 31 July 2011.

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

(i) *Iraq*

On 15 December 2010, the Security Council, acting under Chapter VII of the Charter of the United Nations, decided in resolution 1956 (2010) to terminate, on 30 June 2011, the arrangements established in paragraph 20 of resolution 1483 (2003) for depositing into the Development Fund for Iraq proceeds from export sales of petroleum, petroleum products and natural gas and the arrangements referred to in paragraph 12 of resolution 1483 (2003) and paragraph 24 of resolution 1546 (2004) for the monitoring of the Development Fund for Iraq by the International Advisory and Monitoring Board. The Council further decided that, subject to the exception provided for in paragraph 27 of resolution 1546 (2004), the provisions of paragraph 22 of resolution 1483 (2003) shall continue to apply until 30 June 2011, including with respect to funds and financial assets and economic resources described in paragraph 23 of that resolution.

By the same resolution, the Council decided that after 30 June 2011, the requirement established in paragraph 20 of resolution 1483 (2003) that all proceeds from export sales of petroleum, petroleum products and natural gas from Iraq be deposited into the Development Fund for Iraq shall no longer apply. The Council affirmed that the requirement established in paragraph 21 of resolution 1483 (2003) that 5 percent of the proceeds from all export sales of petroleum, petroleum products and natural gas shall be deposited into the compensation fund established in accordance with resolution 687 (1991), and subsequent resolutions, shall continue to apply, and further decided that 5 percent of the value of any non-monetary payments of petroleum, petroleum products and natural gas made to service providers shall be deposited into the compensation fund, and that unless the Government of Iraq and the governing council of the United Nations Compensation Commission, in the exercise of its authority over methods of ensuring that payments are made into the compensation fund, decide otherwise, the above requirements shall be binding on the Government of Iraq.

On the same day, the Security Council decided by resolution 1957 (2010) to terminate the weapons of mass destruction, missile, and civil nuclear-related measures imposed by paragraphs 8, 9, 10, 12 and 13 of resolution 687 (1991) and paragraph 3 (f) of resolution 707 (1991) and as reaffirmed in subsequent relevant resolutions. The Council decided also to review in one year's time progress made by Iraq on its commitment to ratify the Additional Protocol to the Comprehensive Safeguards Agreement and meet its obligations under the Chemical Weapons Convention.[71]

Similarly, by resolution 1958 (2010) of 15 December 2010, the Council requested the Secretary-General to take all actions necessary to terminate all residual activities under the "Oil-for-food" Program. It authorized the Secretary-General to ensure that 20 million United States dollars of the Iraq Account are retained in the escrow account until 31 December 2016, exclusively for the expenses of the United Nations related to the orderly termination of the residual activities of the Program, including the Organization's support to Member State investigations and Member State proceedings related to the Program, and the expenses of the high-level coordinator's office created pursuant to resolution 1284, and further requested that all remaining funds be transferred to the Government of Iraq by 31 December 2016; authorized the Secretary-General to ensure that up to 131 million United States dollars of the Iraq Account are retained in the escrow account for the purpose of providing indemnification to the United Nations, its representatives, agents and independent contractors for a period of six years with regard to all activities in connection with the Program since its inception, and further requested that all remaining funds be transferred to the Government of Iraq by 31 December 2016; and authorized the Secretary-General to facilitate the transfer as soon as possible of all funds remaining, beyond those retained for the purposes of paragraphs 4 and 5, from the Iraq Account created pursuant to paragraph 16 (d) of resolution 1483 (2003) to the Development Fund of Iraq.

The Security Council Committee established pursuant to resolution 1518 (2003) of 24 November 2003 as the successor body to the Security Council Committee established pursuant to resolution 661 (1990) concerning Iraq and Kuwait, to identify senior officials of the former Iraqi regime and their immediate family members, including entities owned or controlled by them or by persons acting on their behalf, who are subject to the measures imposed by resolution 1483 (2003), continued its operations in 2010 and submitted, on 24 January 2011, a report on its work in 2010 to the Security Council.[72]

(ii) *Sierra Leone*

By resolution 1940 (2010) of 29 September 2010, the Security Council, acting under Chapter VII, decided to terminate, with immediate effect, the measures set forth in paragraphs 2, 4 and 5 of resolution 1171 (1998), and decided further to dissolve the Committee established by paragraph 10 of resolution 1132 (1997) with immediate effect.

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[71] United Nations, *Treaty Series*, vol. 1974, p. 45.

[72] Annual report of the Security Council Committee established pursuant to resolution 1518 (2003), annex to Letter dated 24 January 2011 from the Chair of the Security Council Committee established pursuant to resolution 1518 (2003) addressed to the President of the Security Council (S/2011/40).

(iii) *Democratic Republic of the Congo*

On 29 November 2010, the Security Council, acting under Chapter VII of the Charter of the United Nations, adopted resolution 1952 (2010), by which it decided to renew until 30 November 2011 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 requested the Secretary-General to extend, for a period expiring on 30 November 2011, the mandate of the Group of Experts established pursuant to resolution 1533 (2004) and renewed by subsequent resolutions, with the addition of a sixth expert on natural resources issues. The Council further requested the Group of Experts: to fulfil its mandate as set out in paragraph 18 of resolution 1807 (2008) and expanded by paragraphs 9 and 10 of resolution 1857 (2008), and to report to the Council in writing, through the Committee, by 18 May 2011 and again before 17 October 2011; to focus its activities in areas affected by the presence of illegal armed groups, including North and South Kivu and Orientale Province, as well as on regional and international networks providing support to illegal armed groups, criminal networks and perpetrators of serious violations of international humanitarian law and human rights abuses, including those within the national armed forces, operating in the eastern part of the Democratic Republic of the Congo; and to evaluate the impact of due diligence guidelines referred to in paragraph 7 of resolution 1952 (2010) and continue its collaboration with other forums.

The Security Council Committee established pursuant to resolution 1533 (2004) of 12 March 2004, to oversee the relevant sanctions measures and to undertake the tasks set out by the Security Council in paragraph 15 of resolution 1807 (2008), paragraph 6 of resolution 1857 (2008) and paragraph 4 of resolution 1896 (2009), continued its operations in 2010 and submitted, on 10 January 2011, its report on its work in 2010 to the Security Council.[73]

(iv) *Liberia*

By resolution 1961 (2010) of 17 December 2010, the Security Council, acting under Chapter VII of the Charter of the United Nations, decided to renew for a period of 12 months the measures on travel imposed by paragraph 4 of resolution 1521 (2003). It further decided to renew for a period of 12 months from the date of adoption of this resolution the measures on arms, previously imposed by paragraph 2 of resolution 1521 (2003) and modified by paragraphs 1 and 2 of resolution 1683 (2006), by paragraph 1 (b) of resolution 1731 (2006), and by paragraphs 3, 4, 5 and 6 of resolution 1903 (2009). The Council decided to review any of the above measures at the request of the Government of Liberia, once the Government reports to the Council that the conditions set out in resolution 1521 (2003) for terminating the measures have been met, and provides the Council with information to justify its assessment.

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[73] Report of the Security Council Committee established pursuant to resolution 1533 (2004) concerning the Democratic Republic of the Congo, annex to Letter dated 10 January 2011 from the Chair of the Security Council Committee established pursuant to resolution 1533 (2004) concerning the Democratic Republic of the Congo addressed to the President of the Security Council (S/2011/18).

The Council also decided to extend the mandate of the Panel of Experts appointed pursuant to paragraph 9 of resolution 1903 (2009) for a further period until 16 December 2011. 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 on arms as amended by resolution 1903 (2009); to assess the impact and effectiveness of the measures imposed by paragraph 1 of resolution 1532 (2004); to assess, within the context of Liberia's evolving legal framework, the extent to which forests 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.

The Security Council Committee established pursuant to resolution 1521 (2003) of 22 December 2003, to oversee the relevant sanctions measures and to undertake the tasks set out by the Security Council in the same resolution, as modified by resolutions 1532 (2004), 1683 (2006) and 1903 (2009), continued its operations in 2010. It did not submit a report to the Security Council in 2010.

(v) *Somalia and Eritrea*

By resolution 1916 of 19 March 2010, the Security Council, acting under Chapter VII of the Charter of the United Nations, decided to extend the mandate of the Monitoring Group referred to in paragraph 3 of resolution 1558 (2004), and requested the Secretary-General to take the necessary administrative measures as expeditiously as possible to re-establish the Monitoring Group for a period of twelve months, drawing, as appropriate, on the expertise of the members of the Monitoring Group established pursuant to resolution 1853 (2008), and consistent with resolution 1907 (2009), with the addition of three experts, in order to fulfil its expanded mandate, this mandate being *inter alia*: to continue the tasks outlined in paragraphs 3 (a) to (c) of resolution 1587 (2005) and paragraphs 23 (a) to (c) of resolution 1844 (2008); to carry out additionally the tasks outlined in paragraphs 19 (a) to (d) of resolution 1907 (2009); to investigate, in coordination with relevant international agencies, all activities, including in the financial, maritime and other sectors, which generate revenues used to commit violations of the Somalia and Eritrea arms embargoes; to investigate any means of transport, routes, seaports, airports and other facilities used in connection with violations of the Somalia and Eritrea arms embargoes; to continue refining and updating information on the draft list of those individuals and entities that engage in acts described in paragraphs 8 (a) to (c) of resolution 1844 (2008), inside and outside Somalia, and their active supporters, for possible future measures by the Council, and to present such information to the Committee as and when the Committee deems appropriate; to compile a draft list of those individuals and entities that engage in acts described in paragraphs 15 (a) to (e) of resolution 1907 (2009) inside and outside Eritrea, and their active supporters, for possible future measures by the Council, and to present such information to the Committee as and when the Committee deems appropriate; to continue making recommendations; to work closely with the Committee on specific recommendations for additional measures to improve overall compliance with the Somalia and Eritrea arms embargoes, as well as the measures imposed in paragraphs 1, 3 and 7 of resolution 1844

(2008) and paragraphs 5, 6, 8, 10, 12 and 13 of resolution 1907 (2009) concerning Eritrea; to assist in identifying areas where the capacities of States in the region can be strengthened to facilitate the implementation of the arms embargo, as well as the measures imposed in paragraphs 1, 3 and 7 of resolution 1844 (2008) and paragraphs 5, 6, 8, 10, 12 and 13 of resolution 1907 (2009) concerning Eritrea; to provide to the Council, through the Committee, a midterm briefing within six months of its establishment, and to submit progress reports to the Committee on a monthly basis; and to submit, for the Security Council's consideration, through the Committee, a final report covering all the tasks set out above, no later than 15 days prior to the termination of the Monitoring Group's mandate. The Security Council further requested the Secretary-General to make the necessary financial arrangements to support the work of the Monitoring Group.

The Security Council Committee established pursuant to resolutions 751 (1992) and 1907 (2009) continued its operations in 2010 and submitted, on 7 January 2010, its annual report on its work in 2009 to the Security Council.[74]

(vi) *Côte d'Ivoire*

By resolution 1946 (2010), adopted on 15 October 2010, the Security Council, acting under Chapter VII of the Charter of the United Nations, decided to renew until 31 October 2011 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 import 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 in light of the progress achieved in the electoral process and in the implementation of the key steps of the peace process, as referred to in resolution 1933 (2010), by 31 October 2011, and decided further to carry out until 31 October 2011 a review of the measures no later than three months after the holding of open, free, fair and transparent presidential elections in accordance with international standards, with a view to possibly modifying, lifting or maintaining the sanctions regime, in accordance with progress in the peace process. The Council also decided, in line with paragraph 27 of resolution 1933 (2010) and in addition to the provisions of paragraph 8 of resolution 1572 (2004), that the arms embargo shall not apply to the supplies of non-lethal equipment intended solely to enable the Ivorian security forces to use only appropriate and proportionate force while maintaining public order, as approved in advance by the Sanctions Committee.

In the same resolution, the Security Council decided to extend the mandate of the Group of Experts, as set out in paragraph 7 of resolution 1727 (2006), until 30 April 2011. It further decided that the report of the Group of Experts may include, as appropriate, any information and recommendations relevant to the Committee's possible additional designation of the individuals and entities described in paragraphs 9 and 11 of resolution 1572 (2004); requested the Group of Experts to submit a report as well as recommendations to the Security Council through the Committee 15 days before the end of its man-

[74] Annual report of the Security Council Committee established pursuant to resolution 751 (1992) concerning Somalia, annex to Letter dated 6 January 2010 from the Chairman of the Security Council Committee established pursuant to resolution 751 (1992) concerning Somalia addressed to the President of the Security Council (S/2010/14).

dated period, on the implementation of the measures imposed by paragraphs 7, 9 and 11 of resolution 1572 (2004) and paragraph 6 of resolution 1643 (2005); and decided to renew the exemptions set out by paragraph 16 and 17 of resolution 1893 (2009) with regards to the securing of samples of rough diamonds for scientific research purposes coordinated by the Kimberley Process.

The Security Council Committee established pursuant to resolution 1572 (2004) of 15 November 2004, to oversee the relevant sanctions measures and to undertake the tasks set out by the Security Council in paragraph 14 of the same resolution, as modified by resolutions 1584 (2005), 1643 (2005) and 1946 (2010), continued its operations in 2010.

(vii) *The Sudan*

By resolution 1945 (2010) of 14 October 2010, the Security Council, acting under Chapter VII of the Charter of the United Nations, extended until 19 October 2011 the mandate of the Panel of Experts for the Sudan, originally appointed pursuant to Security Council resolution 1591 (2005) and subsequently extended by resolutions 1651 (2005), 1665 (2006), 1713 (2006), 1779 (2007), 1841 (2008) and 1891 (2009), to assist in monitoring the implementation of measures adopted against the Sudan. The Panel of Experts was requested, *inter alia*, to provide no later than 31 March 2011 a midterm briefing on its work and no later than 90 days after adoption of resolution 1945 (2010) 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.

The Security Council Committee established pursuant to resolution 1591 (2005) of 29 March 2005, to oversee the relevant sanctions measures and to undertake the tasks set out by the Security Council in the same resolution, as modified by resolution 1945 (2010), continued its operations in 2010 and submitted, on 30 December 2010, a report on its work in 2010 to the Security Council.[75]

(viii) *Lebanon*

The Security Council Committee established pursuant to resolution 1636 (2005) of 31 October 2005, to register as subject to the travel ban and assets freeze imposed by paragraph 3(a) of the resolution individuals designated by the international independent investigation Commission or the Government of Lebanon as suspected of involvement in the 14 February 2005 terrorist bombing in Beirut, Lebanon, that killed former Lebanese Prime Minister Rafiq Hariri and 22 others, remained in existence in 2010. As of 26 January 2007, no individuals have been registered by the Committee.

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[75] Report of the Security Council Committee established pursuant to resolution 1591 (2005) concerning the Sudan, annex to Letter dated 30 December 2010 from the Chairman of the Security Council Committee established pursuant to resolution 1591 (2005) concerning the Sudan addressed to the President of the Security Council (S/2010/679).

(ix) *Democratic People's Republic of Korea*

By resolution 1928 of 7 June 2010, the Security Council decided to extend until 12 June 2011 the mandate of the Panel of Experts, which had been appointed by the Secretary-General pursuant to paragraph 26 of resolution 1874 (2009). It requested the Panel of Experts to provide to the Council a midterm report on its work, no later than 12 November 2010, and a final report no later than thirty days prior to the termination of its mandate, with its findings and recommendations.

The Security Council Committee established pursuant to resolution 1718 (2006) of 14 October 2006, to oversee the relevant sanctions measures and to undertake the tasks set out in that same resolution, as modified by resolution 1874 (2009), continued its operations in 2010. On 14 January 2010, the Committee submitted to the Security Council a report on its activities in 2009.[76]

(x) *Islamic Republic of Iran*

By resolution 1929 (2010) of 9 June 2010, the Security Council affirmed that Iran had so far failed to meet the requirements of the International Atomic Energy Agency (IAEA) Board of Governors and to comply with resolutions 1696 (2006), 1737 (2006), 1747 (2007) and 1803 (2008). The Council affirmed that Iran shall without further delay take the steps required by the IAEA Board of Governors in its resolutions GOV/2006/14 and GOV/2009/82 and by paragraph 2 of resolution 1737 (2006). It reaffirmed that Iran shall cooperate fully with the IAEA on all outstanding issues, particularly those which give rise to concerns about the possible military dimensions of the Iranian nuclear programme, and stressed the importance of ensuring that the IAEA have all necessary resources and authority for the fulfilment of its work in Iran. The Council decided that Iran shall without delay comply fully and without qualification with its IAEA Safeguards Agreement, and called upon Iran to act strictly in accordance with the provisions of the Additional Protocol to its IAEA Safeguards Agreement that it signed on 18 December 2003 and to ratify promptly the Additional Protocol. It reaffirmed that, in accordance with Iran's obligations under previous resolutions to suspend all reprocessing, heavy water-related and enrichment-related activities, Iran shall not begin construction of any new uranium-enrichment, reprocessing, or heavy water-related facility and shall discontinue any ongoing construction of any uranium-enrichment, reprocessing, or heavy water-related facility.

By the same resolution, the Security Council decided, *inter alia,* that Iran shall not acquire an interest in any commercial activity in another State involving uranium mining, production or use of nuclear materials and technology; that all States shall prohibit such investment in territories under their jurisdiction by Iran; that all States shall prevent the direct or indirect supply, sale or transfer to Iran, from or through their territories or by their nationals or individuals subject to their jurisdiction, of any battle tanks, armoured combat vehicles, large calibre artillery systems, combat aircraft, attack helicopters, warships, missiles or missile systems as defined for the purpose of the United Nations Register of Conventional

[76] Annual report of the Security Council Committee established pursuant to resolution 1718 (2006), annex to Letter dated 14 January 2010 from the Chairman of the Security Council Committee established pursuant to resolution 1718 (2006) addressed to the President of the Security Council, (S/2010/28).

Arms, or related materiel, including spare parts, or items as determined by the Security Council or the Committee established pursuant to resolution 1737 (2006); that all States shall prevent the provision to Iran by their nationals or from or through their territories of technical training, financial resources or services, advice, other services or assistance related to the supply, sale, transfer, provision, manufacture, maintenance or use of such arms and related materiel; that Iran shall not undertake any activity related to ballistic missiles capable of delivering nuclear weapons, including launches using ballistic missile technology, and that States shall take all necessary measures to prevent the transfer of technology or technical assistance to Iran related to such activities; that the measures specified in paragraphs 12, 13, 14 and 15 of resolution 1737 (2006) shall apply also to the individuals and entities listed in Annex I to the resolution, to the Islamic Revolutionary Guard Corps individuals and entities, and to the entities of the Islamic Republic of Iran Shipping Lines; that all States shall take the necessary measures to prevent the entry into or transit through their territories of individuals designated in this and previous resolutions on the issue; to authorize all States to, and that all States shall, seize and dispose of (such as through destruction, rendering inoperable, storage or transferring to a State other than the originating or destination States for disposal) items the supply, sale, transfer, or export of which is prohibited by this and previous resolutions on the issue; that all States shall prohibit the provision by their nationals or from their territory of bunkering services, such as provision of fuel or supplies, or other servicing of vessels, to Iranian-owned or -contracted vessels; that all States shall require their nationals, persons subject to their jurisdiction and firms incorporated in their territory or subject to their jurisdiction to exercise vigilance when doing business with entities incorporated in Iran or subject to Iran's jurisdiction; and that the mandate of the Committee as set out in paragraph 18 of resolution 1737 (2006), as amended by paragraph 14 of resolution 1803 (2008), shall also apply to the measures decided in resolution 1929 (2010).

The Security Council also requested the Secretary-General to create, for an initial period of one year, in consultation with the Security Council Committee established pursuant to resolution 1736 (2006), a group of up to eight experts ("Panel of Experts"), under the direction of the Committee, to carry out the following tasks: to assist the Committee in carrying out its mandate as specified in paragraph 18 of resolution 1737 (2006) and paragraph 28 of resolution 1929 (2010); to gather, examine and analyse information from States, relevant United Nations bodies and other interested parties regarding the implementation of the measures decided in resolutions 1737 (2006), 1747 (2007), 1803 (2008) and resolution 1929 (2010), in particular incidents of non-compliance; to make recommendations on actions that the Council, or the Committee or State, may consider to improve implementation of the relevant measures; and to provide to the Council an interim report on its work no later than 90 days after the Panel's appointment, and a final report no later than 30 days prior to the termination of its mandate, with its findings and recommendations. The Secretary-General established the Panel on 5 November 2010.[77]

The Security Council also requested within 90 days a report from the Director General of the IAEA on whether Iran has established full and sustained suspension of all activities mentioned in all relevant resolutions. The Council affirmed that it shall review Iran's actions in light of this report; that it shall suspend the implementation of measures if

[77] Letter dated 5 November 2010 from the Secretary-General addressed to the President of the Security-Council (S/2010/576).

and for so long as Iran suspends all enrichment related and reprocessing activities, including research and development, as verified by the IAEA, to allow for negotiations in good faith in order to reach an early and mutually acceptable outcome; that it shall terminate the measures specified resolution 1737 (2006), as well as in resolution 1747 (2007), 1803 (2008), and 1929 (2010), as soon as it determines, following receipt of the report referred to in the paragraph above, that Iran has fully complied with its obligations under the relevant resolutions of the Security Council and met the requirements of the IAEA Board of Governors, as confirmed by the IAEA Board of Governors; and that it shall, in the event that the report shows that Iran has not complied with resolutions 1737 (2006), 1747 (2007), 1803 (2008) and 1929 (2010), adopt further appropriate measures under Article 41 of Chapter VII of the Charter of the United Nations to persuade Iran to comply with these resolutions and the requirements of the IAEA.

The Security Council Committee established pursuant to resolution 1737 (2006) of 23 December 2006, to undertake the tasks set out in that same resolution, as modified by resolutions 1747 (2007), 1803 (2008) and 1929 (2010), continued its operations in 2010 and submitted a report to the Security Council on 31 December 2010.[78]

(*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. Its sanctions regime has been modified and strengthened by subsequent resolutions, including resolutions 1333 (2000), 1390 (2002), 1455 (2003), 1526 (2004), 1617 (2005), 1735 (2006), 1822 (2008) and 1904 (2009). The Committee continued its operations throughout 2010 and submitted a report to the Security Council on 31 December 2010.[79]

On 3 June 2010, the Secretary-General appointed, in line with Security Council resolution 1904 (2009) of 17 December 2009, the first Ombudsperson to assist the Committee, Ms. Kimberly Prost (Canada), with the mandate outlined in annex II of that resolution.[80]

b. Counter-Terrorism Committee

The Counter-Terrorism Committee (CTC) was established pursuant to Security Council resolution 1373 (2001) of 28 September 2001. The Committee continued its operations

[78] Report of the Security Council Committee established pursuant to resolution 1737 (2006), annex to Letter dated 31 December 2010 from the Chairman of the Security Council Committee established pursuant to resolution 1737 (2006) addressed to the President of the Security Council (S/2010/682).

[79] Report of the Security Council Committee established pursuant to resolution 1267 (1999) concerning Al-Qaida and the Taliban and associated individuals and entities, annex to Letter dated 31 December 2010 from the Chairman of the Security Council Committee established pursuant to resolution 1267 (1999) concerning Al-Qaida and the Taliban and associated individuals and entities addressed to the President of the Security Council (S/2010/685).

[80] Letter dated 3 June 2010 from the Secretary-General addressed to the President of the Security Council (S/2010/282).

through 2010, and submitted, on 7 December 2010, its report to the Security Council.[81] On 2 November 2010, the Counter-Terrorism Committee Executive Directorate (CTED) submitted a report to the Committee detailing the activities and achievements of the CTED and recommendations for future activities of the Committee.[82]

By resolution 1963 (2010) of 20 December 2010, the Security Council decided that the CTED will continue to operate as a special political mission under the policy guidance of the CTC for the period ending 31 December 2013 and further decided to conduct an interim review by 30 June 2012. It welcomed and endorsed the recommendations contained in the "Report of the Counter-Terrorism Committee to the Security Council for its Comprehensive Consideration of the Work of the Counter-Terrorism Executive Directorate". The Council directed CTED to produce an updated Global Implementation Survey of resolution 1373 (2001) by 30 June 2011 and to, *inter alia*: assesses the evolution of risks and threats, and the impact of the implementation; identifies gaps in the implementation; and proposes new practical ways to implement the resolution. It also directed CTED to produce a Global Implementation Survey of resolution 1624 (2005) by 31 December 2011.

c. 1540 Committee (non-proliferation of weapons of mass destruction to non-State actors)

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 2010.

(*i*) Humanitarian law and human rights in the context of peace and security

(i) *Children and armed conflict*

The Security Council Working Group on Children and Armed Conflict (CAAC) was established in July 2005 pursuant to Security Council resolution 1612 (2005) of 26 July 2005. Consisting of the 15 Security Council members, the Working Group meets in close session to: review the reports of the monitoring and reporting mechanism (MRM) referred to in paragraph 3 of resolution 1612 (2005); review progress in the development and implementation of the action plans mentioned in paragraph 5 (a) of resolution 1539 (2004) and paragraph 7 of resolution 1612 (2005); consider other relevant information presented to it; make recommendations to the Council on possible measures to promote the protection of children affected by armed conflict, including through recommendations on appropriate mandates for peacekeeping missions and recommendations with respect to parties to the

[81] Report of the Counter-Terrorism Committee to the Security Council for its comprehensive consideration of the work of the Counter-Terrorism Committee Executive Directorate (S/2010/616).

[82] Report of the Counter-Terrorism Committee Executive Directorate to the Counter-Terrorism Committee on the activities and achievements of the Executive Directorate from 2008 to 2010 and recommendations for future activities, dated 2 November 2010 (S/2010/569).

conflict; and address requests, as appropriate, to other bodies within the United Nations system for action to support implementation of Security Council resolution 1612 (2005) in accordance with their respective mandates.

In 2010, the Working Group published five conclusions, on Uganda,[83] Sri Lanka,[84] Colombia,[85] Nepal[86] and the Philippines.[87] The Working Group presented its annual report to the President of the Security Council on 2 August 2010.[88]

(ii) *Protection of civilians in armed conflict*

At the 6427th meeting of the Security Council, held on 22 November 2010, the Security Council, by way of statement by its President, adopted the fourth edition of its *Aide Memoire* on protection of civilians in armed conflict, updated from a version dated 15 March 2002.[89] The *Aide Memoire* is intended to facilitate the Security Council's consideration of issues relevant to the protection of civilians in armed conflict. To this end, it highlights primary objectives for Security Council action; offers, on the basis of the Security Council's past practice, specific issues for consideration in meeting those objectives; and provides, in the addendum, a selection of agreed language from Security Council resolutions and presidential statements that refer to such concerns.

(iii) *Women, peace and security*

By resolution 1960 (2010) of 16 December 2010, the Security Council, welcoming the report of the Secretary-General of 24 November 2010[90] but remaining deeply concerned over the slow progress on the issue of sexual violence in situations of armed conflict in particular against women and children, reaffirmed that sexual violence, when used or commissioned as a tactic of war or as a part of a widespread or systematic attack against civilian populations, can significantly exacerbate and prolong situations of armed conflict and may impede the restoration of international peace and security. The Council affirmed in this regard that effective steps to prevent and respond to such acts of sexual violence

[83] Security Council Working Group on Children and Armed Conflict, Conclusions on children and armed conflict in Uganda dated 16 June 2010 (S/AC.51/2010/1).

[84] Security Council Working Group on Children and Armed Conflict, Conclusions on children and armed conflict in Sri Lanka dated 3 June 2010 (S/AC.51/2010/2).

[85] Security Council Working Group on Children and Armed Conflict, Conclusions on children and armed conflict in Colombia dated 30 September 2010 (S/AC.51/2010/3).

[86] Security Council Working Group on Children and Armed Conflict, Conclusions on children and armed conflict in Nepal dated 12 November 2010 (S/AC.51/2010/4).

[87] Security Council Working Group on Children and Armed Conflict, Conclusions on children and armed conflict in the Philippines dated 12 November 2010 (S/AC.51/2010/5).

[88] Security Council Working Group on Children and Armed Conflict, Annual report on the activities of the Security Council Working Group on Children and Armed Conflict, established pursuant to resolution 1612 (2005) (1 July 2009 to 30 June 2010), dated 2 August 2010 (S/2010/410).

[89] Protection of civilians in armed conflicts, *Aide Memoire,* annex to Statement of the President of the Security Council of 22 November 2010 (S/PRST/2010/25).

[90] Report of the Secretary-General on the implementation of Security Council resolutions 1820 (2008) and 1888 (2009), dated 24 November 2010 (A/65/592-S/2010/604).

can significantly contribute to the maintenance of international peace and security; and expressed its readiness, when considering situations on the agenda of the Council, to take, where necessary, appropriate steps to address widespread or systematic sexual violence in situations of armed conflict. It reiterated its demand for the complete cessation with immediate effect by all parties to armed conflict of all acts of sexual violence and requested the Secretary-General, in accordance with the present resolution and taking into account its specificity, to apply the listing and de-listing criteria for parties listed in his annual report on sexual violence in armed conflict consistent with paragraphs 175, 176, 178, and 180 of his report on children and armed conflict of 13 April 2010.[91]

In the same resolution, the Council further requested the Secretary-General to track and monitor implementation of these commitments by parties to armed conflict on the Security Council's agenda that engage in patterns of rape and other sexual violence, and regularly update the Council in relevant reports and briefings; to establish monitoring, analysis and reporting arrangements on conflict-related sexual violence, including rape in situations of armed conflict and post-conflict and other situations relevant to the implementation of resolution 1888 (2009), as appropriate, and taking into account the specificity of each country, that ensure a coherent and coordinated approach at the field-level; to continue and strengthen efforts to implement the policy of zero tolerance on sexual exploitation and abuse by United Nations peacekeeping and humanitarian personnel; to continue to provide and deploy guidance on addressing sexual violence for predeployment and inductive training of military and police personnel, and to assist missions in developing situation-specific procedures to address sexual violence at the field level and to ensure that technical support is provided to troop and police contributing countries in order to include guidance for military and police personnel on addressing sexual violence in predeployment and induction training. Finally, the Council requested that the Secretary-General continue to submit annual reports to the Council on the implementation of resolutions 1820 (2008) and 1888 (2009) and to submit his next report by December 2011 on the implementation of resolutions 1820 (2008) and 1888 (2009).

(iv) *Sexual violence in conflict*

On 2 February 2010, the Secretary-General appointed Mrs. Margot Wallström (Sweden) to the newly created position of his Special Representative on Sexual Violence in Conflict.[92] The Secretary-General acted upon request of the Security Council, which in resolution 1888 (2009) of 30 September 2009 had requested the appointment of a Special Representative to provide coherent and strategic leadership; to work effectively to strengthen existing United Nations coordination mechanisms; and to engage in advocacy efforts, inter alia with governments, including military and judicial representatives, as well as with all parties to armed conflict and civil society, in order to address, at both headquarters and country level, sexual violence in armed conflict, while promoting cooperation and coor-

[91] Report of the Secretary-General on children in armed conflict, dated 13 April 2010 (A/64/742-S/2010/181).

[92] Exchange of letters between the Secretary-General and the President of the Security Council, dated 29 January 2010 (S/2010/62) and 2 February 2010 (S/2010/63).

dination of efforts among all relevant stakeholders, primarily through the inter-agency initiative "United Nations Action Against Sexual Violence in Conflict".

(*j*) Piracy[93]

By resolution 1918 of 27 April 2010, the Security Council affirmed that the failure to prosecute persons responsible for acts of piracy and armed robbery at sea off the coast of Somalia undermines anti-piracy efforts of the international community. It requested the Secretary-General to present to the Security Council within three months a report on possible options to further the aim of prosecuting and imprisoning persons responsible for acts of piracy and armed robbery at sea off the coast of Somalia, including, in particular, options for creating special domestic chambers possibly with international components, a regional tribunal or an international tribunal and corresponding imprisonment arrangements, taking into account the work of the Contact Group on Piracy off the Coast of Somalia (CGPCS), the existing practice in establishing international and mixed tribunals, and the time and the resources necessary to achieve and sustain substantive results;

On 23 November 2010, the Security Council, acting under Chapter VII of the Charter of the United Nations, adopted resolution 1950 (2010), in which it reiterated that it condemns and deplores all acts of piracy and armed robbery against vessels in the waters off the coast of Somalia; acknowledged Somalia's rights with respect to offshore natural resources, including fisheries, in accordance with international law; encouraged Member States to continue to cooperate with the Transitional Federal Government (TFG) in the fight against piracy and armed robbery at sea, noted the primary role of the TFG in the fight against piracy and armed robbery at sea, and decided for a further period of twelve months from the date of resolution 1950 (2010) to renew the authorizations as set out in paragraph 10 of resolution 1846 (2008) and paragraph 6 of resolution 1851 (2008), as renewed by resolution 1897 (2009), granted to States and regional organizations cooperating with the TFG in the fight against piracy and armed robbery at sea off the coast of Somalia, for which advance notification has been provided by the TFG to the Secretary-General; and affirmed that the authorizations renewed in the resolution apply only with respect to the situation in Somalia and shall not affect the rights or obligations or responsibilities of Member States under international law, including any rights or obligations, under the United Nations Convention on the Law of the Sea, 1982,[94] with respect to any other situation, and underscored in particular that resolution 1950 (2010) shall not be considered as establishing customary international law. The Council also reaffirmed its interest in the continued consideration of all seven options for prosecuting suspected pirates described in the Secretary-General's report[95] which provide for

[93] For the actions of the International Maritime Organization with regard to piracy, see section 4 (e) (vi) e of chapter III B of this publication.

[94] United Nations, *Treaty Series*, vol. 1833, p. 3.

[95] Report of the Secretary-General on possible options to further the aim of prosecuting and imprisoning persons responsible for acts of piracy and armed robbery at sea off the coast of Somalia, including, in particular, options for creating special domestic chambers possibly with international components, a regional tribunal or an international tribunal and corresponding imprisonment arrangements, taking into account the work of the Contact Group on Piracy off the Coast of Somalia, the existing practice in establishing international and mixed tribunals, and the time and resources necessary to achieve and sustain substantive results, dated 26 July 2010 (S/2010/394).

different levels of international participation, taking into account further new information and observations from the Secretary-General based on the consultations being conducted by his Special Adviser on Legal Issues Related to Piracy off the Coast of Somalia, with a view to taking further steps to ensure that pirates are held accountable.

3. Disarmament and related matters

(*a*) Disarmament machinery

(i) *Commission*

The United Nations 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.

On 15 March 2010, at the organizational session of its 2010 session in New York, held from 29 March to 16 April 2010, the Commission adopted the agenda which included the items "Recommendations for achieving the objective of nuclear disarmament and non-proliferation of nuclear weapons", "Elements of a draft declaration of the 2010s as the fourth disarmament decade" and "Practical confidence-building measures in the field of conventional weapons". The Secretary-General transmitted to the Commission the annual report of the Conference on Disarmament,[96] together with all the official records of the sixty-fourth session of the General Assembly relating to disarmament matters.

The Commission held six plenary meetings and met in two Working Groups. In accordance with the past practice of the Commission, some non-governmental organizations attended the plenary meetings. Working Group I held 10 meetings from 31 March to 14 April 2010, discussing the agenda item "Recommendations for achieving the objective of nuclear disarmament and non-proliferation of nuclear weapons". Working Group II held nine meetings from 31 March to 14 April, discussing the agenda item "Elements of a draft declaration of the 2010s as the fourth disarmament decade". On 16 April 2010, the Commission adopted by consensus the reports of its subsidiary bodies and the conclusions and recommendations contained therein. At the same meeting, the Commission adopted, as a whole, its report to be submitted to the General Assembly at its sixty-fifth session.[97]

(ii) *Conference on Disarmament*[98]

The Conference on Disarmament was in session from 18 January to 26 March, 31 May to 16 July and from 9 August to 24 September 2010, during which it held 35 formal plenary meetings. On 26 January 2010, the Conference adopted the agenda for the 2010 session,[99] which included, *inter alia*, the items "Cessation of the nuclear arms race and

[96] *Official Records of the General Assembly, Sixty-fourth Session, Supplement No. 27* (A/64/27).

[97] *Ibid., Sixty-fifth Session, Supplement No. 42* (A/65/42).

[98] 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.

[99] *See* Decision for the establishment of a Programme of Work for the 2010 session (CD/1884).

nuclear disarmament", "Prevention of nuclear war, including all related matters", "Prevention of an arms race in outer space", "Effective international arrangements to assure non-nuclear-weapon States against the use or threat of use of nuclear weapons", "New types of weapons of mass destruction and new systems of such weapons; radiological weapons", "Comprehensive programme of disarmament" and "Transparency in armaments". On 7 June 2010, the Conference agreed upon a schedule of informal meetings of the Conference during the second part of the 2010 session.[100] No consensus was reached on proposals for a programme of work for the 2010 session.[101] On 14 September 2010, the Conference adopted its annual report and transmitted it to the General Assembly for its consideration.[102]

(iii) *General Assembly*

On 8 December 2010, the General Assembly adopted, on the recommendation of the First Committee, eight resolutions concerning the institutional make-up of the United Nations' efforts in the field of disarmament,[103] three of which are highlighted below.

By resolution 65/66, entitled "Convening of the fourth special session of the General Assembly devoted to disarmament", the General Assembly decided to convene an Open-ended Working Group, working on the basis of consensus, to consider the objectives and agenda, including the possible establishment of the preparatory committee, for the fourth special session of the General Assembly devoted to disarmament; and that the Open-ended Working Group shall hold its organizational session as soon as possible for the purpose of setting a date for its substantive sessions in 2011 and 2012, and submit a report on its work, including possible substantive recommendations, before the end of the sixty-seventh session of the General Assembly. The Assembly requested the Secretary-General, from within available resources, to provide the Open-ended Working Group with the necessary assistance and services as may be required to discharge its tasks.

By resolution 65/81, entitled "United Nations Disarmament Information Programme", the General Assembly commended the Secretary-General for his efforts to make effective use of the limited resources available to him in disseminating, as widely as possible, information on arms control and disarmament to Governments, the media, nongovernmental organizations, educational communities and research institutes; and it recommended that the Programme continue to inform, educate and generate public understanding of the importance of multilateral action and support for it.

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[100] CD/WP/560 and Amend.1.

[101] CD/WP.559 and CD/1889.

[102] A/65/27.

[103] General Assembly resolution 65/66, entitled "Convening of the fourth special session of the General Assembly devoted to disarmament"; resolution 65/77, entitled "United Nations study on disarmament and non-proliferation education"; resolution 65/81, entitled "United Nations Disarmament Information Programme"; resolution 65/82, entitled "United Nations disarmament fellowship, training and advisory services"; resolution 65/85, entitled "Report of the Conference on Disarmament"; resolution 65/86, entitled "Report of the Commission"; resolution 65/87, entitled "Thirtieth anniversary of the United Nations Institute for Disarmament Research"; resolution 65/93, entitled "Follow-up to the high-level meeting held on 24 September 2010: revitalizing the work of the Conference on Disarmament and taking forward multilateral disarmament negotiations".

By resolution 65/85, entitled "Report of the Conference on Disarmament", the General Assembly reaffirmed the role of the Conference on Disarmament as the sole multilateral disarmament negotiating forum of the international community and expressed its appreciation for the strong support expressed for the Conference on Disarmament by Ministers for Foreign Affairs and other high-level officials at the high-level meeting on revitalizing the work of the Conference on Disarmament and taking forward multilateral disarmament negotiations. The Assembly welcomed the decision of the Conference on Disarmament to request the current President and the incoming President to conduct consultations during the intersessional period. It requested all State 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 its substantive work and requested the Secretary-General to continue to ensure and strengthen, if needed, the provision to the Conference on Disarmament of all necessary administrative, substantive and conference support services

(*b*) Nuclear disarmament and non-proliferation issues

On 30 April 2010, the Second Conference of State Parties and Signatories of Treaties that establish Nuclear-Weapon-Free Zones (NWFZs) and Mongolia was held at the United Nations Headquarters in New York. The Conference aimed to promote NWFZs as indispensable instruments to preserve and foster international peace and security and to further global nuclear disarmament and non-proliferation through the establishment of such zones. The Conference adopted, by consensus, an Outcome Document, which reiterated the goals and the value of the establishment of NWFZs for global nuclear disarmament.[104]

The 2010 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, 1968[105] (NPT) was held from 3 to 28 May 2010 in New York and was attended by 172 State parties to the NPT, an observer state, various observer agencies and 121 non-governmental organizations. At its opening plenary meeting, the Conference adopted its agenda and rules of procedure, as proposed by the Preparatory Committee.[106] In accordance with the rules of procedure, the Conference established a General Committee, three Main Committees, a Drafting Committee and a Credentials Committee. At the same meeting, the Conference allocated items to the three Main Committees as proposed by the Preparatory Committee and it established subsidiary bodies under each of the Main Committees. The Conference decided that Main Committee 1 would focus on the implementation of provisions of the Treaty relating to non-proliferation of nuclear weapons, disarmament, international peace and security; security assurances; and disarmament and non-proliferation education.[107] Main Committee 2 would deal with safeguards and nuclear-weapon-free zones.[108] Main Committee 3 would consider the right

[104] Outcome Document of the Second Conference of Nuclear-Weapon-Free Zones and Mongolia (NWFZM/CONF.2010/1).

[105] United Nations, *Treaty Series*, vol. 729, p. 161.

[106] Final report of the Preparatory Committee for the 2010 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons (NPT/CONF.2010/1).

[107] See Report of Main Committee I (NPT/CONF.2010/MC.I/1).

[108] See Report of Main Committee II (NPT/CONF.2019/MC.II/1).

of all parties to the Treaty to develop research production and use of nuclear energy for peaceful purposes.[109] At its 10th plenary meeting, on 12 May, the Conference decided that institutional issues would be dealt with in the subsidiary body established under Main Committee III. At its 16th and final plenary meeting, on 28 May 2010, the Conference considered the draft Final Document. The Conference decided to take note of the "Review of the operation of the Treaty, as provided for in its article VIII (3), taking into account the decisions and the resolution adopted by the 1995 Review and Extension Conference and the Final Document of the 2000 Review Conference". It also decided to adopt the "Conclusions and recommendations for follow-on actions".[110] The latter included 64 action points on nuclear disarmament, nuclear non-proliferation and peaceful uses of nuclear energy.

The IAEA held its 54th General Conference of Member States from 20 to 24 September 2010, in Vienna. At the Conference, the Member States adopted thirteen resolutions and two decisions[111] backing the IAEA's work in key areas, including resolutions on measures to strengthen international cooperation in nuclear, radiation, transport and waste safety, nuclear security, and the application of IAEA safeguards in the Middle East.

General Assembly

On 8 December 2010, the General Assembly adopted, upon the recommendation of the First Committee, 20 resolutions and one decision concerning nuclear weapons and non-proliferation issues,[112] of which four are described below.

In resolution 65/56, entitled "Nuclear disarmament", the General Assembly recognized that the time is now opportune for all the nuclear-weapon States to take effective

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[109] See Report of Main Committee III (NPT/CONF.2019/MC.III/1).

[110] See Final Document of the 2010 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, NPT/CONF.2010/50 (Vol. I-III).

[111] General Conference resolutions GC(54)/RES/1–13 and decisions GC(54)/DEC/8 and 11.

[112] General Assembly resolutions 65/39 entitled "African Nuclear-Weapon-Free Zone Treaty", 65/40 entitled "Consolidation of the regime established by the Treaty for the Prohibition of Nuclear Weapons in Latin America and the Caribbean (Treaty of Tlatelolco)", 65/42 entitled "Establishment of a nuclear-weapon-free zone in the region of the Middle East", 65/43 entitled "Conclusion of effective international arrangements to assure non-nuclear-weapon States against the use or threat of use of nuclear weapons", 65/49 entitled "Treaty on a Nuclear-Weapon-Free Zone in Central Asia", 65/56 entitled "Nuclear disarmament", 65/58 entitled "Nuclear-weapon-free southern hemisphere and adjacent areas", 65/59 entitled "Towards a nuclear-weapon-free world: accelerating the implementation of nuclear disarmament commitments", 65/60 entitled "Reducing nuclear danger", 65/61 entitled "Bilateral reductions of strategic nuclear arms and the new framework for strategic relations", 65/65 entitled "Treaty banning the production of fissile material for nuclear weapons or other nuclear explosive devices", 65/70 entitled "Mongolia's international security and nuclear-weapon-free status", 65/71 entitled "Decreasing the operational readiness of nuclear weapons systems", 65/72 entitled "United action towards the total elimination of nuclear weapons", 65/73 entitled "The Hague Code of Conduct against Ballistic Missile Proliferation", 65/74 entitled "Preventing the acquisition by terrorists of radioactive sources", 65/76 entitled "Follow-up to the advisory opinion of the International Court of Justice on the Legality of the Threat or Use of Nuclear Weapons", 65/80 entitled "Convention on the Prohibition of the Use of Nuclear Weapons", 65/88 entitled "The risk of nuclear proliferation in the Middle East", 65/91 entitled "Comprehensive Nuclear-Test-Ban Treaty" and decision 65/517 entitled "Missles".

disarmament measures to achieve the total elimination of these weapons at the earliest possible time; urged the nuclear-weapon States to stop immediately the qualitative improvement, development, production and stockpiling of nuclear warheads and their delivery systems; and called for the convening of an international conference on nuclear disarmament in all its aspects at an early date to identify and deal with concrete measures of nuclear disarmament.

In resolution 65/61, entitled "Bilateral reductions of strategic nuclear arms and the new framework for strategic relations", the General Assembly welcomed the signing of the Treaty between the Russian Federation and the United States of America on Measures for the Further Reduction and Limitation of Strategic Offensive Arms (the New START Treaty) on 8 April 2010; and expressed its hope that the Comprehensive Nuclear-Test-Ban Treaty, which opened for signature on 24 September 1996, will enter into force at an early date.

In resolution 65/70, entitled "Mongolia's international security and nuclear-weapon-free status", the General Assembly welcomed the declaration by Mongolia of its nuclear-weapon-free status; supported the measures taken by Mongolia to consolidate and strengthen this status; invited Member States to continue to cooperate with Mongolia in taking the necessary measures to, *inter alia*, consolidate and strengthen Mongolia's independence and its nuclear-weapon-free status; and requested the Secretary-General and relevant United Nations bodies to continue to provide assistance to Mongolia.

In resolution 65/80, entitled "Convention on the Prohibition of the Use of Nuclear Weapons", the General Assembly reiterated its request to the Conference on Disarmament to commence negotiations in order to reach agreement on an international convention prohibiting the use or threat of use of nuclear weapons under any circumstance and requested the Conference on Disarmament to report to the General Assembly on the results of those negotiations.

Security Council

On 9 June 2009, the Security Council adopted resolution 1929 (2010), in which it affirmed Iran's non-compliance with the requirements of the IAEA Board of Governors and previous Security Council resolutions and in which it imposed several measures on Iran.[113]

(*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, 1972[114] (Biological Weapons Convention), the Meeting of Experts was held in Geneva from 23 to 27 August 2010, and the Meeting of States Parties was held from 6 to 10 December 2010. Prominent on the agenda of both bodies was the consideration of the provision of assist-

[113] For further details on Security Council resolution 1929 (2010), see section 2 (*g*)(x) of the present chapter.

[114] United Nations, *Treaty Series*, vol. 1015, p. 163.

ance and coordination with relevant organizations upon request by any State Party in the case of alleged use of biological or toxin weapons, including improving national capabilities for disease surveillance, detection and diagnosis and public health systems

Eighty-nine State Parties to the Convention participated in the Meeting of Experts, together with four signatory states and two observer states. The Meeting was also attended by the United Nations, several of its specialized agencies, the EU and other observers. Furthermore, at the invitation of the Chairman two scientific, professional and academic experts participated in informal exchanges in the open sessions as guests of the Meeting. At its closing meeting on 27 August 2010, the Meeting of Experts heard an interim report from the Chairman on activities to secure universal adherence to the Convention, in accordance with the decision of the Sixth Review Conference. At the same meeting, it adopted its Report.[115]

The Meeting of State Parties was attended by 92 State Parties to the Convention, four signatories, one observer State, the United Nations, specialized agencies and other international organizations and 12 non-governmental organizations and research institutes. The Meeting discussed the provision of assistance and coordination with relevant organizations upon request by any State Party in the case of alleged use of biological or toxin weapons, including improving national capabilities for disease surveillance, detection and diagnosis and public health systems; arrangements for the Seventh Review Conference and its Preparatory Committee in 2011; reports from the Chairman and States Parties on universalization activities; and the report of the Implementation Support Unit. At its closing meeting on 10 December 2010, the Meeting of States Parties adopted its Report by consensus.[116]

With regard to chemical weapons, the fifteenth 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, 1993[117] (Chemical Weapons Convention) was held in The Hague, from 29 November to 3 December 2010. 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. The Conference considered and adopted the report of its fifteenth session.[118]

General Assembly

On 8 December 2010, the General Assembly adopted, upon the recommendation of the First Committee, three resolutions relating to biological and chemical weapons, which are described below.

By resolution 65/51, entitled "Measures to uphold the authority of the 1925 Geneva Protocol", the General Assembly renewed its previous call, in resolution 63/53 of 2 December 2008, to all States to observe strictly the principles and objectives of the Protocol for the Pro-

[115] BWC/MSP/2010/MX/3.

[116] BWC/MSP/2010/6.

[117] United Nations, *Treaty Series*, vol. 1974, p. 45.

[118] C-15/5.

hibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare, signed at Geneva on 17 June 1925,[119] and called upon those States that continued to maintain reservations to the 1925 Geneva Protocol to withdraw them.

By resolution 65/57 entitled "Implementation of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction", the Assembly emphasized that the universality of the Convention was fundamental to the achievement of its objective and purpose, and called upon all States that had not yet done so to become parties to the Convention without delay. The Assembly 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 65/92 entitled "Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and Their Destruction", in which it called upon those States that had not signed the Convention to become parties thereto at an early date; and urged States Parties to continue to work closely with the 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 Fourth Biennial Meeting of States to Consider the Implementation of the 2001 Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects was held from 14 to 18 June 2010 at the United Nations Headquarters in New York. It discussed, *inter alia*, the establishment of regional and subregional mechanisms to prevent, combat and eradicate the illicit trade in small arms and light weapons across borders; international cooperation and assistance; strengthening the follow-up mechanism of the Programme of Action and preparations for the 2011 Experts Group meeting and the 2012 Review Conference; and other issues. At its tenth and final plenary meeting, the Meeting considered and adopted the Outcome Document, which was annexed to its final report of the Meeting.[120]

From 12 to 23 July 2010, Member States of the United Nations gathered in New York for the first Preparatory Committee (PrepCom) on an Arms Trade Treaty (ATT), in accordance with General Assembly resolution 64/48 of 2 December 2009. The PrepCom considered the following issues regarding such a treaty: elements; guiding principles; goals and objectives; scope; criteria and parameters that would guide decisions on transfers; and implementation and application. When concluded, the ATT will be the first legally-binding instrument in the field of conventional disarmament to be negotiated within the framework of the United Nations. Its adoption should contribute to preventing irrespon-

[119] League of Nations, *Treaty Series*, vol. XCIV, p. 65.

[120] A/CONF.192/BMS/2010/3.

sible transfers of conventional arms and thus to enhancing international peace, security and stability. In 2010, regional meetings on the ATT were held in Vienna, New York and Kathmandu.

On 1 August 2010, the Convention on Cluster Munitions[121] entered into force, following the submission of instruments of ratification by Burkina Faso and Moldova. By the end of 2010, the Convention counted 49 State parties and 108 signatories. The First Meeting of States Parties to the Convention took place from 9 to 12 November 2010 in Vientiane, Laos. The Meeting was attended by 33 States Parties to the Convention. A large number of other states participated as observers. Specialized agencies of the United Nations, international and regional organizations and non-governmental organizations also took part in the Meeting as observers. The Meeting discussed, *inter alia*, the universalization of the Convention; the clearance and destruction of cluster munition remnants and risk reduction activities; victim assistance; international cooperation and assistance; transparency and exchange of information; national implementation measures; and compliance. At its eighth and final plenary meeting, the Meeting adopted the Vientiane Declaration and the Vientiane Action Plan, as contained in annex I and II to the final report of the Meeting.[122] At the same plenary meeting, the Meeting decided that the President's paper on the work programme[123] should guide the work programme for 2011 and that the President will organize and conduct an interim, informal intersessional meeting designed to conduct thematic discussions.

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, 1980[124] (Convention on Conventional Weapons), the Governmental Group of Experts (GGE) met for two sessions, from 12 to 16 April and from 30 August to 3 September 2010. The GGE considered a wide range of issue, including general prohibitions and restrictions, storage and stockpiles destruction, the protection of civilian population and civilian objects, and the preparation of the 2011 Fourth Review Conference of the High Contracting parties to the Convention. Informal consultations were held from 17 to 21 August 2009 to further address a Draft Protocol on Cluster Munitions. The GGE was not able to reach a common view on a Draft Protocol and decided to submit the issue for consideration and decision by the 2010 Meeting of the High Contracting Parties to the Convention.[125]

The Meeting of the High Contracting Parties to the Convention on Conventional Weapons was held in Geneva on 25 and 26 November 2010.[126] The High Contracting Parties emphasized the importance of achieving universal adherence to, and compliance with, the Convention and its protocols, and expressed its satisfaction at the steps undertaken for the implementation of the Plan of Action to Promote the Universality of the Convention, the Sponsorship Programme, and the relevant decisions on Compliance. The Meeting 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

[121] The text of the Convention can be found at http://www.clusterconvention.org/files/2011/01/Convention-ENG1.pdf.

[122] CCM/MSP/2010/5.

[123] CCM/MSP/2010/WP.2

[124] United Nations, *Treaty Series,* vol. 1342, p. 137.

[125] For the procedural reports of the GGE, see CCW/GGE/2010-I/7 and CCW/GGE/2010-II/1.

[126] For the final report of the Meeting, see CCW/MSP/2010/5.

Parties also considered the report of the work of GGE and decided that the GGC will continue its negotiations on a draft protocol on cluster munitions.

With regard to the Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices (Amended Protocol II), the Twelfth Annual Conference was held in Geneva on 24 November 2010, in accordance with the decision of the 2009 Meeting of the States Parties to the Convention on Conventional Weapons.[127] The Conference was attended by 70 States that had deposited their instruments of consent to be bound by Amended Protocol II, 24 observer States, the United Nations and several other international organizations and representatives from three non-governmental organizations. The Conference discussed, *inter alia*, the Plan of Action to Promote Universality of the Convention and its annexed Protocols; the operation and status of the Protocol; and the work of the Coordinator on Improvised Explosive Devices. At its second and closing plenary meeting, the Conference adopted its final report.[128]

The Tenth Meeting of the States Parties to the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-personnel Mines and on Their Destruction, 1997[129] (Mine-Ban Convention) was held in Geneva, Switzerland, from 29 November to 3 December 2010. The Meeting discussed the Geneva Progress Report 2009–2010 on achieving the aims of the Cartagena action plan;[130] granted extensions on mine clearance deadlines; evaluated the Implementation Support Unit (ISU);[131] reviewed the Intersessional Work Programme;[132] and considered a paper concerning the Convention's transparency provisions and the reporting process.[133]

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[127] Final Document of the Tenth Annual Conference of the High Contracting Parties to the Amended Protocol, CCW/AP.II/CONF.10/2.

[128] CCW/AP.II/CONF.12/6.

[129] United Nations, *Treaty Series*, vol. 2056, p. 211.

[130] Achieving the aims of the Cartagena action plan: The Geneva progress report 2009–2010, APLC/MSP.10/2010/WP.8.

[131] See, for more information about the ISU Task Force, its Final report and recommendations, APLC/MSP.10/2010/3.

[132] Review of the intersessional work programme, 25 November 2010 (APLC/MSP.10/2010/5).

[133] For the final report of the Meeting, see http://www.apminebanconvention.org/meetings-of-the-states-parties/10msp/.

General Assembly

On 8 December 2010, the General Assembly adopted, on the recommendation of the First Committee, seven resolutions dealing with conventional arms issues,[134] of which two are highlighted below.

In resolution 65/63, entitled "Information on confidence-building measures in the field of conventional arms", the General Assembly welcomed all confidence-building measures in the field of conventional arms already undertaken by Member States and the establishment of the electronic database containing information provided by Member States, and requested the Secretary-General to keep the database updated and to assist Member States, at their request, in the organization of seminars, courses and workshops aimed at enhancing the knowledge of new developments in this field. The Assembly encouraged Member States to continue to adopt confidence-building measures in the field of conventional arms and to provide information in that regard and to continue the dialogue on confidence-building measures in the field of conventional arms.

In resolution 65/64, 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,[135] endorsed the report adopted at the Fourth Biennial Meeting of States to consider the implementation of the Programme of Action and encourages all States to implement, as appropriate, the measures highlighted in the section of the report entitled "The way forward". It further decided to convene a preparatory committee for the review conference, for no longer than a total of five working days, in New York in early 2012.

(*e*) Regional disarmament activities of the United Nations

(i) *Africa*

In 2010, the United Nations Regional Centre for Peace and Disarmament in Africa (UNREC) continued to implement its mandate through various activities in support of disarmament initiatives in the Africa region. Its programmes included a project on regulating small arms brokering in East Africa; developing a regional legal instrument to curb the proliferation of small arms and light weapons; and the African Security Sector Reform Programme. UNREC supported the African Union's 2010 Year of Peace and Security Pro-

[134] General Assembly resolutions 65/48 entitled "Implementation of the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-personnel Mines and on Their Destruction"; resolution 65/50 entitled "Assistance to States for curbing the illicit traffic in small arms and light weapons and collecting them"; resolution 65/63 entitled "Information on confidence-building measures in the field of conventional arms"; resolution 65/64 entitled "The illicit trade in small arms and light weapons in all its aspects"; resolution 65/67 entitled "Consolidation of peace through practical disarmament measures"; resolution 65/75 entitled "Preventing and combating illicit brokering activities"; and resolution 65/89 entitled "Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects".

[135] 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).

gramme with several activities, including radio programmes and a round-table conference on the International Day of Peace, 21 September 2010, in Lomé, Togo.

On 25 and 26 May, UNREC hosted a meeting of twelve independent legal experts and disarmament experts in Lomé to consider the draft "Guide for the harmonization of national legislation on small arms and light weapons in West Africa". Furthermore, in 2010 the Centre continued to serve as the secretariat of the United Nations Standing Advisory Committee on Security Questions in Central Africa (UNSAC).

UNSAC held its thirtieth Ministerial Meeting from 26 to 30 April 2010 in Kinshasa, Democratic Republic of the Congo. Eleven Member States participated in the Meeting, together with several United Nations agencies and other international organizations, who took part as observers. The Committee considered, revised and adopted the Central African Convention for the Control of Small Arms and Light Weapons, Their Ammunition and All Parts and Components That Can Be Used for Their Manufacture, Repair and Assembly ("Kinshasa Convention"), and decided that the Convention would be opened for signature by Member States at the thirty-first ministerial meeting. The Convention was annexed to the report that the Committee adopted on the last day of its Meeting.[136]

From 15 to 19 November 2010, UNSAC held its thirty-first Ministerial Meeting in Brazzaville, Republic of Congo. The Meeting was attended by eleven Member States, while several United Nations agencies and other international organizations participated as observers. The Meeting, *inter alia*, reviewed the geopolitical and security situation in Central Africa; discussed the promotion of disarmament and arms limitation programmes in Central Africa; and considered the promotion of peace and combating crime in Central Africa, with a particular focus on maritime piracy in Central Africa. The Meeting adopted the Implementation Plan for the Central African Convention for the Control of Small Arms and Light Weapons, Their Ammunition and All Parts and Components That Can Be Used for Their Manufacture, Repair and Assembly and opened the Convention for signature. The Implementation Plan was annexed to the report of the Meeting, which was adopted on 18 November 2010.[137]

An exchange of letters between the Secretary-General and the President of the Security Council established the United Nations Regional Office for Central Africa in August 2010.[138]

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[136] Report of the United Nations Standing Advisory Committee on Security Questions in Central Africa, annexed to the identical letters dated 13 October 2010 from the Permanent Representative of the Democratic Republic of the Congo to the United Nations addressed to the Secretary-General and to the President of the Security Council, 15 October 2010 (A/65/517-S/2010/534).

[137] Report of the United Nations Standing Advisory Committee on Security Questions in Central Africa, annexed to the letter dated 1 February 2011 from the Permanent Representative of the Congo to the United Nations addressed to the Secretary-General, A/65/717-S/2011/53.

[138] Exchange of letters dated 11 December 2009 and 30 August 2010 between the Secretary-General and the President of the Security Council (S/2009/697 and S/2010/457). For more information about UNOCA see section 2(c)(iv) of the present chapter, above.

(ii) *Latin America and the Caribbean*

In 2010, the United Nations Regional Centre for Peace, Disarmament and Development in Latin America and the Caribbean (UN-LiREC) continued to carry out its mandate within the framework of its 2008–2011 Strategic Plan. The three programmatic areas of UN-LiREC include public security, the projects of which focus on strengthening the capacity of State institutions in tackling a range of public security challenges and threats related to illicit firearms trafficking and armed violence through capacity-building and technical assistance; disarmament policy-making, which deals with assisting States in building national capacities and mechanisms to effectively implement disarmament instruments leading to sustainable disarmament; and disarmament and non-proliferation advocacy, which focuses on promoting dialogue, alliances and cooperative disarmament measures within and among States, as well as awareness of disarmament and non-proliferation tools and instruments in order to promote a "disarmament culture".[139]

(iii) *Asia and the Pacific*

In 2010, 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 Asian and Pacific region.[140] The Centre held a Regional Seminar Enhancing International and Regional Cooperation to Prevent, Combat and Eradicate Illicit Brokering in Small Arms and Light Weapons in East and Southeast Asia in Bangkok, Thailand, on 18 and 19 February 2010; a Regional Meeting on the implementation of the Programme of Action on small arms and light weapons for Southeast Asia on 29 and 30 March 2010 in Bali, Indonesia; and coordinated several workshops and other seminars across the continent.

On 22 July, 17 August and 25 November 2010, the Centre organized a meeting to establish a Working Group on Small Arms and other portable lethal Weapons in Nepal. On 2 and 3 December, the Centre held the Ninth Annual United Nations-Republic of Korea Joint Conference, hosted by the Republic of Korea, to address the theme "Nuclear Renaissance and International Peace and Security".

The Centre organized the Twenty-Second United Nations Conference on Disarmament Issues from 25 to 27 August 2010, which was hosted by the Government of Japan in Saitama. The Conference assessed the outcome of the 2010 Review Conference of the Treaty on the Non-proliferation of Nuclear Weapons (NPT) and addressed ways to make progress in achieving nuclear disarmament, non-proliferation and promoting the peaceful uses of nuclear energy. It also addressed regional disarmament and non-proliferation

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[139] For more information, see Report of the Secretary-General on the United Nations Regional Centre for Peace, Disarmament and Development in Latin America and the Caribbean (A/65/139) and the forthcoming report in 2011.

[140] For more information, see Report of the Secretary-General on the United Nations Regional Centre for Peace, Disarmament and Development in Asia and the Pacific (A/65/120) and the forthcoming report in 2011.

challenges and discussed the role of civil society and peace and disarmament education in advancing disarmament, arms control and non-proliferation.[141]

(iv) *General Assembly*

On 2 December 2009, the General Assembly adopted, on the recommendation of the First Committee, nine resolutions and one decision dealing with regional disarmament,[142] of which two are highlighted below.

In resolution 65/46, 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 65/47, 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 Commission at its 1993 substantive session[143] 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.

(v) *Security Council*

On 26 February 2010, the Security Council, by statement of its President, welcomed Iraq's support for the international non-proliferation regime, its accession to the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, 1993,[144] its signing of the Additional Protocol to the Comprehensive Safeguards Agreement with the International Atomic Energy Agency and its intention to sign the Hague Code of Conduct against Ballistic Missile Proliferation.[145]

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[141] For more information, see http://www.unrcpd.org.np/activities/conferences/conferences.php?cid=38.

[142] General Assembly resolution 65/45 entitled "Regional Disarmament"; resolution 65/46 entitled "Conventional arms control at the regional and subregional levels"; resolution 65/47 entitled "confidence-building measures in the regional and subregional context"; resolution 65/90 entitled "Strengthening of security and cooperation in the Mediterranean region"; resolution 65/78 entitled "United Nations regional centres for peace and disarmament"; resolution 65/79 entitled "United Nations Regional Centre for Peace, Disarmament and Development in Latin America and the Caribbean"; resolution 65/83 entitled "United Nations Regional Centre for Peace and Disarmament in Asia and the Pacific"; resolution 65/84 entitled "Regional confidence-building measures: activities of the United Nations Standing Advisory Committee on Security Questions in Central Africa"; and decision 65/515 entitled "Maintenance of international security—good-neighbourliness, stability and development in South-Eastern Europe".

[143] A/48/42.

[144] United Nations, *Treaty Series*, vol. 1974, p. 45.

[145] Statement by the President of the Security Council, 26 February 2010 (S/PRST/2010/5).

By statement of its President on 19 March 2010, the Security Council expressed its grave concerns about the illicit manufacture, transfer and circulation of small arms and light weapons in the subregion of Central Africa. The Council underlined the vital importance of effective regulations and controls of the transparent trade of such weaponry; reiterated that Member States should comply with existing arms embargoes; and called on the States of the subregion to strengthen efforts to establish mechanisms and regional networks among their relevant authorities for information sharing to combat the illicit circulation and trafficking in small arms and light weapons.[146]

(*f*) Other issues

(i) *Terrorism and disarmament*

a. General Assembly

On 8 December 2010, the General Assembly adopted, upon the recommendation of the First Committee, resolution 65/62 entitled "Measures to prevent terrorists from acquiring weapons of mass destruction". 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[147] 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 20 December 2010, the Security Council adopted resolution 1963 (2010).[148]

(ii) *Outer space*

During its 2010 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 another four informal meetings on this issue were held on 9, 14, 30 June and 5 July 2010. The Secretary-General submitted his report on "Transparency and confidence-building measures in outer space activities", which contained the replies received from Governments on the issue, on 13 July 2010.[149]

General Assembly

On 8 December 2010, the General Assembly adopted, on the recommendation of the First Committee, two resolutions in the area of outer space and disarmament.

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[146] Statement by the President of the Security Council, 19 March 2010 (S/PRST/2010/6).

[147] General Assembly resolution 59/290 of 13 April 2005, annex.

[148] For further details on resolution 1963 (2010), see section 2 (h) (b) of the present chapter, above.

[149] Report of the Secretary-General on Transparency and confidence-building measures in outer space activities (A/65/123 and Add.1).

In its resolution 65/44, 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. 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.

In resolution 65/68, entitled "Transparency and confidence-building measures in outer space activities", the General Assembly invited 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.

(iii) *Relationship between disarmament and development*

On 8 December 2010, the General Assembly adopted, on the recommendation of the First Committee, resolution 65/52, 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 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 8 December 2010, the General Assembly adopted, on the recommendation of the First Committee, resolution 65/54 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 urged the participation of all interested States in multilateral negotiations on arms regulation, non-proliferation and disarmament in a non-discriminatory and transparent manner.

(v) *Gender and disarmament*

On 8 December 2010, the General Assembly adopted, on the recommendation of the First Committee, resolution 65/69 entitled "Women, disarmament, non-proliferation and arms control", in which it encouraged Member States, regional and subregional organizations, the United Nations and specialized agencies to promote the equitable representation of women in all decision-making processes with regard to matters related to disarmament, non-proliferation and arms control and invited all States to support and strengthen the effective participation of women in organizations in the field of disarmament at the local, national, regional and subregional levels.

(vi) *The environment and disarmament*

Pursuant to General Assembly resolution 64/33 of 2 December 2009, the Secretary-General submitted to the Assembly at its sixty-fifth 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.[150]

On 8 December 2010, the General Assembly, upon the recommendation of the First Committee, adopted resolution 65/53, 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.

On the same day, the General Assembly adopted resolution 65/55 entitled "Effects of the use of armaments and ammunitions containing depleted uranium", by which the Assembly, *inter alia*, invited Member States that have used armaments and ammunitions containing depleted uranium in armed conflicts to provide the relevant authorities of affected States, upon request, with information, as detailed as possible, about the location of the areas of use and the amounts used, with the objective of facilitating the assessment of such areas.

(vii) *Information security and disarmament*

By resolution 65/41 of 8 December 2010 entitled "Developments in the field of information and telecommunications in the context of international security", the General Assembly, on the recommendation of the First Committee, called upon Member States to promote further at multilateral levels the consideration of existing and potential threats in the field of information security, as well as possible strategies to address the threats emerging in this field, consistent with the need to preserve the free flow of information. It requested the Secretary-General, with the assistance of a group of governmental experts, to be established in 2012, to continue to study existing and potential threats in the sphere of information security and possible cooperative measures to address them and to submit a report on the results of this study to the Assembly at its sixty-eighth session.

By decision 65/516 of 8 December 2010 entitled "Role of science and technology in the context of international security and disarmament", the General Assembly decided to include an item with the name of the decision on the provisional agenda of its sixty-sixth session.

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[150] Report of the Secretary-General, Observance of environmental norms in the drafting and implementation of agreements on disarmament and arms control (A/64/118).

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-ninth session[151] at the United Nations Office at Vienna from 22 March to 1 April 2010. On 22 March, at the 803rd meeting, Ahmad Talebzadeh (Islamic Republic of Iran) was elected Chair for a two-year term.

Under the agenda item "Status and application of the five United Nations treaties on outer space", the Subcommittee noted three additional accessions since 1 January 2010 and provided a revised status of the five United Nations treaties on outer space.[152] Some delegations expressed the view that the United Nations treaties on outer space were no longer sufficient for addressing the rapid development of space activities and emphasized the need to explore the possibility of improving the existing legal regime. Views were expressed that a universal comprehensive convention governing the activities of States in the exploration and use of outer space should be developed in a balanced manner with the aim of finding solutions for existing issues, giving legal binding status to the United Nations principles on outer space and supplementing provisions of the existing United Nations treaties on outer space. Furthermore, the view was expressed that the placement of conventional weapons in outer space was not sufficiently prohibited by the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies, 1966.

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,[153] which was endorsed by the Subcommittee. 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 to ask States whether they considered it necessary to define and/or delimit airspace and outer space, or if they would consider another approach to solving this issue.

Regarding the agenda item entitled "Examination and review of the developments concerning the draft protocol on matters specific to space assets to the Convention on International Interests in Mobile Equipment",[154] the Subcommittee noted that the third

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[151] For the Report of the Legal Subcommittee on its forty-ninth session, see A/AC.105/942.

[152] Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies, United Nations, *Treaty Series*, vol. 610, p. 205; Agreement on the Rescue of Astronauts, the Return of Astronauts and the Return of Objects Launched into Outer Space, United Nations, *Treaty Series*, vol. 672, p. 119; Convention on International Liability for Damage Caused by Space Objects, United Nations, *Treaty Series*, vol. 961, p. 187; Convention on Registration of Objects Launched into Outer Space, United Nations, *Treaty Series*, vol. 1023, p. 15; and Agreement Governing the Activities of States on the Moon and Other Celestial Bodies, United Nations, *Treaty Series*, vol. 1363, p. 3.

[153] Report of the Legal Subcommittee on its forty-ninth session, annex II (A/AC.105/942).

[154] United Nations, *Treaty Series*, vol. 2307, p. 285.

session of the International Institute for the Unification of Private Law (UNIDROIT) committee of governmental experts was held in December 2009 and that the committee had reviewed the text of the draft space assets protocol resulting from its second session, held in 2003, as well as two alternative texts. The committee had agreed that all future work would be carried out on the basis of the alternative text proposing technical amendments.

Under the agenda item "General exchange of information on national mechanisms relating to space debris mitigation measures", the Subcommittee noted with satisfaction that some States were implementing space debris mitigation measures consistent with the Space Debris Mitigation Guidelines of the Committee of the Peaceful Uses of Outer Space and/or the Inter-Agency Space Debris Coordination Committee (IADC) Space Debris Mitigation Guidelines and that other States had developed their own space debris mitigation standards based on those guidelines. The Subcommittee also noted that other States were using the IADC Guidelines and the European Code of Conduct for Space Debris Mitigation as references in the regulatory framework established for national space activities. Moreover, the Subcommittee noted that some States had strengthened their national mechanisms governing space debris mitigation through, *inter alia*, the nomination of governmental supervisory authorities.

Concerning the "General exchange of information on national legislation relevant to the peaceful exploration and use of outer space", the Subcommittee noted with satisfaction the database on national space legislation and multilateral and bilateral agreements which was being maintained by the Office for Outer Space Affairs on its website.[155]

(*b*) General Assembly

On 8 December 2010, the General Assembly adopted, on the recommendation of the First Committee, resolution 65/44 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 was a need to consolidate and reinforce that regime and enhance its effectiveness; and that it was important to comply strictly with existing agreements, both bilateral and multilateral. The Assembly 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 2011 session, and reiterated that the Conference on Disarmament had the primary role in the negotiation of a multilateral agreement or agreements, as appropriate, 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 on the matter.

On the same day, the Assembly adopted, on the recommendation of the First Committee, resolution 65/68 entitled "Transparency and confidence-building measures in outer-space activities". In this resolution, the Assembly noted the introduction by China and the Russian Federation at the Conference on Disarmament, held on this subject in

[155] See website of the Office for Outer Space Affairs at http://unoosa.org.

2010, of the draft treaty on the prevention of the placement of weapons in outer space and of the threat or use of force against outer space objects.[156] The Assembly also noted the presentation by the European Union of a draft code of conduct for outer space activities. Furthermore, the Assembly took note of the final report of the Secretary-General containing concrete proposals from Member States on international outer space transparency and confidence-building measures.[157] Additionally, the Assembly requested the Secretary-General to establish a group of governmental experts to conduct a study on this matter, to commence in 2012.

On 10 December 2010, the Assembly adopted, on the recommendation of the Fourth Committee, resolution 65/97 entitled "International cooperation in the peaceful uses of outer space". In the resolution, the Assembly urged States that had not yet become parties to the international treaties governing the uses of outer space to give consideration to ratifying or acceding to those treaties in accordance with their domestic law, as well as incorporating them in their national legislation. It further urged all States, in particular those with major space capabilities, to contribute actively to the goal of preventing an arms race in outer space as an essential condition for the promotion of international cooperation in the exploration and use of outer space for peaceful purposes. The General Assembly decided that Tunisia shall become a member of the Committee on the Peaceful Uses of Outer Space and endorsed the decision of the Committee to grant permanent observer status to the International Association for the Advancement of Space Safety. Finally, it welcomed the fact that the Committee will celebrate at its fifty-fourth session the 50th anniversary of the Committee and the 50th anniversary of human space flight.

[156] Letter dated 12 February 2008 from the Permanent Representative of the Russian Federation and the Permanent Representative of China to the Conference on Disarmament addressed to the Secretary-General of the Conference transmitting the Russian and Chinese texts of the Draft "Treaty on Prevention of the Placement of Weapons in Outer Space and of the Threat or Use of Force against Outer Space Objects (PPWT)" introduced by the Russian Federation and China (CD/1839).

[157] A/65/123 of 13 July 2010.

5. Human rights[158]

(*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,[159] 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 Member States, including the members of the Council, over a cycle of four years through the universal periodic review.[160] The Council also assumed the thirty-eight country and thematic special procedures existing under the Commission on Human Rights while reviewing the mandate and criteria for the establishment of these special procedures.[161] 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.[162]

In 2010, the Human Rights Council held its thirteenth, fourteenth and fifteenth regular sessions[163] and two special sessions on "Human Rights Council to hold Special Session

[158] 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.

[159] 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.

[160] The first session of review cycle 2008–2011 was held from 7 to 18 April 2008. For a list of States 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.

[161] Human Rights Council decision 1/102 of 30 June 2006.

[162] 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.

[163] For the reports of the thirteenth, fourteenth, and fifteenth sessions respectively, see A/HRC/13/L.10, A/HRC/14/L.10 and A/HRC/15/L.10.

on Support to recovery process in Haiti: A Human Rights approach",[164] and "The situation of human rights in Côte d'Ivoire since the elections on 28 November 2010".[165]

(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 its fourth session from 25 to 29 January 2010[166] and its fifth session from 2 to 6 August 2010 in Geneva.[167]

(iii) *Human Rights Committee*

The Human Rights Committee was established under the International Covenant on Civil and Political Rights of 1966[168] to monitor the implementation of the Covenant and its Optional Protocols[169] in the territory of States Parties. The Committee held its ninety-eighth session in New York from 8 to 26 March 2010, and its ninety-ninth and hundredth sessions in Geneva from 12 to 30 July and from 11 to 29 October 2010, respectively.[170]

(iv) *Committee on Economic, Social and Cultural Rights*

The Committee on Economic, Social and Cultural Rights was established by the Economic and Social Council[171] to monitor the implementation of the International Covenant on Economic, Social and Cultural Rights of 1966[172] by its State parties. The Committee

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[164] Thirteenth special session of the Human Rights Council held in Geneva on 27 and 28 January 2010. See the Report of the Human Rights Council on its thirteenth special session (A/HRC/S-13/2).

[165] Fourteenth special session held in Geneva on 23 December 2010. See the Report of the Human Rights Council on its fourteenth special session (A/HRC/S-14/1).

[166] For the Report of the Advisory Committee on its fourth session, see (A/HRC/AC/4/4).

[167] For the Report of the Advisory Committee on its fifth session, see (A/HRC/AC/5/3).

[168] United Nations, *Treaty Series*, vol. 999, p. 171.

[169] 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.

[170] For the reports of the ninety-eighth and ninety-ninth sessions, see *Official Records of the General Assembly, Sixty-fifth Session, Supplement No. 40* (A/65/40), vols. I and II. At the time of publication, the report of the hundredth session was forthcoming.

[171] Economic and Social Council resolution 1985/17 of 28 May 1985.

[172] United Nations, *Treaty Series*, vol. 993, p. 3.

held its forty-fourth and forty-fifth sessions in Geneva from 3 to 21 May and from 1 to 19 November 2010, respectively.[173]

(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[174] to monitor the implementation of this Convention by its States Parties. The Committee held its seventy-sixth and seventy-seventh sessions in Geneva from 15 February to 12 March and from 2 to 27 August 2010, respectively.[175]

(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[176] to monitor the implementation of this Convention by its States Parties. The Committee held its forty-fifth session in Geneva from 18 January to 5 February 2010, its forty-sixth session in New York from 12 to 30 July 2010, and its forty-seventh session in Geneva from 4 to 22 October 2010.[177]

(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[178] to monitor the implementation of the Convention by its States Parties. In 2010, the Committee held its forty-fourth and forty-fifth sessions from 26 April to 14 May and from 1 to 19 November, respectively, in Geneva.[179] 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,[180] held its tenth, eleventh and

[173] Report of the Committee on Economic, Social and Cultural Rights on its forty-fourth and forty-fifth sessions (E/2011/22) (forthcoming).

[174] United Nations, *Treaty Series*, vol. 660, p. 195.

[175] The respective reports can be found in *Official Records of the General Assembly, Sixty-fifth Session, Supplement No. 18* (A/65/18).

[176] United Nations, *Treaty Series*, vol. 1249, p. 13.

[177] The report of the forty-fifth session can be found in Official Records of the General Assembly, Sixty-fourth Session, Supplement No. 38 (A/65/38). The report of the forty-sixth and forty-seventh sessions can be found in Official Records of the General Assembly, Sixth-fifth Session, Supplement No. 38 (A/66/38) (forthcoming).

[178] United Nations, *Treaty Series*, vol. 1465, p. 85.

[179] The report of the forty-fourth session can be found in *Official Records of the General Assembly, Sixty-fifth Session, Supplement No. 44* (A/65/44). The report of the forty-fifth session can be found in *Official Records of the General Assembly, Sixty-sixth Session, Supplement No. 44* (A/66/44) (forthcoming).

[180] 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.

twelfth sessions from 22 to 26 February, from 21 to 25 June and from 15 to 19 November 2010, 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[181] to monitor the implementation of this Convention by its States Parties. The Committee held its fifty-third, fifty-fourth and fifty-fifth sessions in Geneva, from 11 to 29 January, from 25 May to 11 June, and from 13 September to 1 October 2010, respectively.[182]

(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[183] to monitor the implementation of this Convention by its States Parties in their territories. In 2010, the Committee held its twelfth and thirteenth sessions in Geneva from 26 to 30 April and from 22 November to 3 December, respectively.[184]

(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 of 2006[185] and its 2006 Optional Protocol[186] 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 to the

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[181] United Nations, *Treaty Series*, vol. 1577, p. 3.

[182] The report of the fifty-third, fifty-fourth and fifty-fifth sessions can be found in *Official Records of the General Assembly, Sixty-fifth Session, Supplement No. 41* (A/65/41).

[183] United Nations, *Treaty Series*, vol. 2220, p. 3.

[184] The report of the twelfth session can be found in *Official Records of the General Assembly, Sixty-fifth Session, Supplement No. 48* (A/65/48). The report of the thirteenth session can be found in *Official Records of the General Assembly, Sixty-sixth Session, Supplement No. 48* (A/66/48) (forthcoming).

[185] 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).

[186] General Assembly resolution 61/106 of 13 December 2006. The Optional Protocol was opened for signature on 30 March 2007, and entered into force on 3 May 2008, in accordance with article 13(1).

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 third session from 22 to 26 February 2010, and its fourth session from 4 to 8 October 2010.[187]

(*b*) Racism, racial discrimination, xenophobia and all forms of discrimination

(i) *Human Rights Council*

The Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Mr. Githu Muigai, submitted two reports to the Human Rights Council during 2010. The first report was submitted on 30 March 2010[188] and was aimed at providing an analysis of how racism, racial discrimination and conflict interrelate, before, during and after a conflict. The second report was submitted to the Council by the Special Rapporteur on 12 July 2010[189] pursuant to Council resolution 13/16 of 25 March 2010 entitled "combating defamation of religions", in which the Special Rapporteur was requested to report on all manifestations of defamation of religions, and in particular on the ongoing serious implications of Islamophobia.

On 24 March 2010, the Human Rights Council adopted resolution 13/2, entitled "Human rights and arbitrary deprivation of nationality", in which the Council, *inter alia*, noted the provisions of international human rights instruments and international instruments on statelessness and nationality recognizing the right to acquire, change or retain nationality or prohibiting arbitrary deprivation of nationality, *inter alia*, article 5, paragraph (d) (iii), of the International Convention on the Elimination of All Forms of Racial Discrimination, 1966;[190] article 24, paragraph 3, of the International Covenant on Civil and Political Rights, 1966;[191] articles 7 and 8 of the Convention on the Rights of the Child, 1989;[192] articles 1 to 3 of the Convention on the Nationality of Married Women, 1957;[193] article 9 of the Convention on the Elimination of All Forms of Discrimination against Women, 1979;[194] article 18 of the Convention on the Rights of Persons with Disabilities, 2006;[195] the Convention on the Reduction of Statelessness, 1959;[196] and the Convention relating to the Status of Stateless Persons, 1954.[197] The Council also recalled that arbitrarily depriving a person of his or her nationality may lead to statelessness and, in this regard,

[187] The reports of the third and fourth sessions were forthcoming at the time of publication.

[188] A/HRC/14/43.

[189] A/HRC/15/53.

[190] United Nations, *Treaty Series*, vol. 660, p. 195.

[191] *Ibid.*, vol. 999, p. 171.

[192] *Ibid.*, vol. 1577, p. 3.

[193] *Ibid.*, *Treaty Series*, vol. 309, p. 65.

[194] *Ibid.*, *Treaty Series*, vol. 1249, p. 13.

[195] General Assembly resolution 61/106 of 13 December 2006.

[196] United Nations, *Treaty Series*, vol. 989, p. 175.

[197] *Ibid.*, vol. 360, p.117.

the Council expressed concern at various forms of discrimination against stateless persons that may violate the obligations of States under international human rights law.

On the same day, the Council adopted resolution 13/4, entitled "The right to food", in which the Council, *inter alia*, acknowledged the work being carried out by the Advisory Committee on the right to food and, in that regard, welcomed its submission to the Council of the preliminary study on discrimination in the context of the right to food, including an identification of good practices of anti-discriminatory policies and strategies.[198]

On 25 March 2010, the Council adopted resolution 13/18, entitled "Elaboration of complementary standards to the International Convention on the Elimination of All Forms of Racial Discrimination", in which the Council, *inter alia*, recalled its decision 3/103 of 8 December 2006 on the elaboration of complementary standards to the International Convention on the Elimination of All Forms of Racial Discrimination, 1966[199] and the creation of the *Ad Hoc* Committee for this purpose. The Council also underlined the imperative need for the *Ad Hoc* Committee to elaborate complementary standards to the International Convention in accordance with paragraph 199 of the Durban Programme of Action.[200] Furthermore, the Council took note with appreciation of the report of the Chairperson-Rapporteur of the *Ad Hoc* Committee on the elaboration of complementary standards decided that the *Ad Hoc* Committee shall convene its third session from 29 November to 10 December 2010.

On the same day, the Council also adopted resolution 13/16, entitled "Combating defamation of religions", in which the Council, *inter alia*, noted with deep concern the introduction and enforcement of laws and administrative measures that specifically discriminate against and target persons with certain ethnic and religious backgrounds, particularly Muslim minorities following the events of 11 September 2001.

The Council expressed deep concern that Islam is frequently and wrongly associated with human rights violations and terrorism and, in this regard, regretted the laws or administrative measures specifically designed to control and monitor Muslim minorities, thereby stigmatizing them and legitimizing the discrimination they experience. In this regard, the Council strongly condemned the ban on the construction of minarets of mosques and other recent discriminatory measures, which are manifestations of Islamophobia which stand in sharp contradiction to international human rights obligations concerning freedoms of religion, belief, conscience and expression, and stressed that such discriminatory measures would fuel discrimination, extremism and misperception leading to polarization and fragmentation with dangerous unintended and unforeseen consequences.

The Council emphasized that, as stipulated in international human rights law, including articles 19 and 29 of the Universal Declaration of Human Rights[201] and articles 19 and 20 of the International Covenant on Civil and Political Rights,[202] everyone has the right to hold opinions without interference and the right to freedom of expression, the exercise of which carries with it special duties and responsibilities and may therefore be subject to limitations only as provided for by law and are necessary for respect of the rights or reputa-

[198] A/HRC/13/32.

[199] United Nations, *Treaty Series*, vol. 660, p. 195.

[200] A/CONF.189/12.

[201] General Assembly resolution 217 (III) A of 10 December 1948.

[202] United Nations, *Treaty Series*, vol. 999, p. 171.

tions of others, protection of national security or of public order, public health or morals and general welfare. The Council furthermore reaffirmed that general comment No. 15 of the Committee on the Elimination of Racial Discrimination, in which the Committee stipulated that the prohibition of the dissemination of all ideas based upon racial superiority or hatred is compatible with freedom of opinion and expression, is equally applicable to the question of incitement to religious hatred. The Council called upon all States to make the utmost effort, in accordance with their national legislation and in conformity with international human rights and humanitarian law, to ensure that religious places, sites, shrines and symbols are fully respected and protected, and to take additional measures in cases where they are vulnerable to desecration or destruction, and welcomed the plan of the Office of the High Commissioner to hold a series of expert workshops to examine legislation, judicial practices and national policies in different regions, in order to assess different approaches to prohibiting incitement to hatred, as stipulated in article 20 of the International Covenant on Civil and Political Rights.

On 26 March 2010, the Council adopted resolution 13/27, entitled "A world of sports free from racism, racial discrimination, xenophobia and related intolerance", in which the Council, *inter alia*, stressed the importance of combating racism, racial discrimination, xenophobia and related intolerance in all circumstances, including in sports. The Council recalled the Universal Declaration of Human Rights,[203] the International Covenant on Civil and Political Rights,[204] the International Covenant on Economic, Social and Cultural Rights,[205] the International Convention on the Elimination of All Forms of Racial Discrimination,[206] the Vienna Declaration and Programme of Action[207] and the Durban Declaration and Programme of Action,[208] and acknowledged that, in paragraph 218 of the Durban Declaration and Programme of Action, the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance urged States, in cooperation with intergovernmental organizations, the International Olympic Committee and international and regional sports federations to intensify the fight against racism in sport by, among other things, educating the youth of the world through sport practised without discrimination of any kind and in the Olympic spirit, which requires human understanding, tolerance, fair play and solidarity. The Council also underlined the importance of combating impunity for racially motivated crimes in sport, and urged States to take all appropriate measures, in accordance with domestic legislation and international obligations, to prevent, combat and address all manifestations of racism, racial discrimination, xenophobia and related intolerance in the context of sporting events, and to ensure that racially-motivated crimes are punished by law, as appropriate.

On 18 June 2010, the Council adopted resolution 14/16, entitled "From rhetoric to reality: a global call for concrete action against racism, racial discrimination, xenophobia and related intolerance". In the resolution, the Council, *inter alia*, decided to convene a

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[203] General Assembly resolution 217 (III) A of 10 December 1948.

[204] United Nations, *Treaty Series*, vol. 999, p. 171.

[205] *Ibid*., vol. 993, p. 3.

[206] *Ibid*., vol. 660, p. 195.

[207] Adopted by the World Conference on Human Rights held in Vienna, 14–25 June 1993 (A/CONF.157/23).

[208] A/CONF.189/12.

panel discussion during its high-level segment of its sixteenth session focusing on the full enjoyment of the human rights of people of African descent, to mark the International Year for People of African Descent and that the Intergovernmental Working Group on the Effective Implementation of the Durban Declaration and Programme of Action should convene its eighth session from 11 to 22 October 2010.

On 30 September 2010, the Council adopted resolution 15/10, entitled "Elimination of discrimination against persons affected by leprosy and their family members", in which the Council, *inter alia*, recalled Council resolutions 8/13 of 18 June 2008 and 12/7 of 1 October 2009, in which the Council requested the Human Rights Council Advisory Committee to formulate and finalize a draft set of principles and guidelines for the elimination of discrimination against persons affected by leprosy and their family members. The Council welcomed the submission of views of relevant actors on the draft set of principles and guidelines in accordance with Council resolution 12/7, and expressed its appreciation to the Advisory Committee for finalizing the draft set of principles and guidelines for the elimination of discrimination against persons affected by leprosy and their family members. The Council noted that the Principles and Guidelines are to be interpreted in a manner consistent with States' obligations under international human rights law, including relevant Conventions, and took note with appreciation of the Principles and Guidelines submitted to the Council by the Advisory Committee.[209] Additionally, the Council encouraged Governments, relevant United Nations bodies, specialized agencies, funds and programmes, other intergovernmental organizations and national human rights institutions to give due consideration to the Principles and Guidelines in the formulation and implementation of their policies and measures concerning persons affected by leprosy and their family members.

On 1 October 2010, the Council adopted resolution 15/23, entitled "Elimination of discrimination against women", in which the Council, *inter alia*, expressed deep concern by the fact that women everywhere are still subject to significant disadvantage as the result of discriminatory laws and practices and that *de jure* and *de facto* equality has not been achieved in any country in the world. The Council recognized that women face multiple forms of discrimination, and that the elimination of discrimination against women, in law and in practice, is primarily the responsibility of States, and that the United Nations human rights system plays an important role in contributing to these efforts. The Council was mindful of the fact that the elimination of discrimination against women requires the consideration of women's specific socio-economic context, and recognizing that laws, policies, customs and traditions that restrict women's equal access to full participation in development processes and public and political life are discriminatory and may contribute to the feminization of poverty. The Council also welcomed the efforts made by States around the world to reform their legal systems in order to remove obstacles to women's full and effective enjoyment of their human rights. Moreover, the Council expressed concern at the fact that, despite the pledge made at the Fourth World Conference on Women and the review conducted by the General Assembly at its twenty-third special session to modify or abolish remaining laws that discriminate against women and girls, many of these laws are still in force and continue to be applied, thereby preventing women and girls from enjoying the full realization of their human rights. The Council called upon States to fulfil their

[209] A/HRC/15/30, annex.

international obligations and commitments to revoke any remaining laws that discriminate on the basis of sex and remove gender bias in the administration of justice, taking into account the fact that those laws violate the human right of women to be protected against discrimination. The Council welcomed the convening of a panel on equality before the law during the eleventh session of the Council and noted that, although human rights treaty bodies and special procedures do, to some extent, address discrimination against women within their mandates, their attention to such discrimination is not systematic. The Council took note of the thematic study on discrimination against women, in law and in practice, and on how the issue is addressed throughout the United Nations human rights system, prepared by the Office of the High Commissioner,[210] and decided to establish, for a period of three years, a working group of five independent experts, of balanced geographical representation, on the issue of discrimination against women in law and in practice, whose tasks will be to, *inter alia*: develop a dialogue with relevant partners and institutions to identify, promote and exchange views on best practices related to the elimination of laws that discriminate against women or are discriminatory to women in terms of implementation or impact and, in that regard, to prepare a compendium of best practices; undertake a study on the ways and means in which the working group can cooperate with States to fulfil their commitments to eliminate discrimination against women in law and in practice; make recommendations on the improvement of legislation and the implementation of the law; and submit an annual report to the Council, starting at its twentieth session, on the issue of discrimination against women in law and in practice, and on good practices in eliminating such discrimination, drawing upon the findings of the United Nations human rights machinery and the broader United Nations system.

(ii) *General Assembly*

The Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Mr. Githu Muigai, submitted his report to the General Assembly on 13 August 2010.[211] In the report, the Special Rapporteur addressed and presented a number of conclusions and recommendations relating to racism and conflict, incitement to racial and religious hatred, the situation of migrants, refugees and asylum-seekers, the collection of ethnically disaggregated data, and racism and sports.

On 21 December 2010, the General Assembly adopted, on the recommendation of the Third Committee, resolution 65/215, entitled "Elimination of discrimination against persons affected by leprosy and their family members", in which it, *inter alia*, took note with appreciation of the Principles and Guidelines for the elimination of discrimination against persons affected by leprosy and their family members.

On the same day, the General Assembly adopted, on the recommendation of the Third Committee, resolution 65/211, entitled "Elimination of all forms of intolerance and of discrimination based on religion or belief". In the resolution, the Assembly, *inter alia*, condemned all forms of intolerance and of discrimination based on religion or belief, as well as violations of freedom of thought, conscience and religion or belief and any advocacy of religious hatred that constitutes incitement to discrimination, hostility or violence,

[210] A/HRC/15/40.

[211] A/65/295.

whether it involves the use of print, audiovisual or electronic media or any other means. The Assembly urged all States to step up their efforts to protect and promote freedom of thought, conscience and religion or belief; and to cooperate fully with the Special Rapporteur on freedom of religion and belief.

The General Assembly also adopted, on the recommendation of the Third Committee, resolution 65/200 on 21 December 2010, entitled "International Convention on the Elimination of All Forms of Racial Discrimination", in which the Assembly, *inter alia*, took note of the reports of the Committee on the Elimination of Racial Discrimination and commended the Committee for its work. It urged all States Parties to comply fully with their obligations under the Convention and urged all States that had not yet become parties to the Convention to ratify or accede to it as a matter of urgency.

Resolution 65/199, entitled "Inadmissibility of certain practices that contribute to fuelling contemporary forms of racism, racial discrimination, xenophobia and related intolerance", was also adopted on 21 December 2010 by the General Assembly, on the recommendation of the Third Committee. The Assembly, *inter alia*, reaffirmed the relevant provisions of the Durban Declaration[212] and of the outcome document of the Durban Review Conference,[213] in which States condemned the persistence and resurgence of neo-Nazism, neo-Fascism and violent nationalist ideologies based on racial and national prejudice and stated that those phenomena could never be justified in any instance or in any circumstances

On 24 December 2010, the General Assembly adopted, on the recommendation of the Third Committee, resolution 65/240, 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". The Assembly, *inter alia*, set out general principles to eliminate racism, racial discrimination, xenophobia and related intolerance; reaffirmed the importance of universal adherence and full implementation of the International Convention on the Elimination of All Forms of Racial Discrimination, 1966; reiterated its call to all Member States and others to cooperate fully with the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; and called upon all States that have not yet elaborated their national action plans on combating racism, racial discrimination, xenophobia and related intolerance to comply with their commitments undertaken at the World Conference of 2001.

(*c*) Right to development and poverty reduction

(i) *Human Rights Council*

On 1 October 2010, the Human Rights Council adopted resolution 15/25 entitled "The right to development". The Council, *inter alia*, decided that the Working Group on the Right to Development shall take appropriate steps to ensure respect for and practical application of standards for the implementation of the right to development, which could take various forms, including guidelines on the implementation of the right to develop-

[212] See A/CONF.189/12 and Corr.1, chap. I.

[213] See A/CONF.211/8, chap. I.

ment, and evolve into a basis for consideration of an international legal standard of a binding nature through a collaborative process of engagement.

(ii) *General Assembly*

On 8 December 2010, the General Assembly adopted, on the recommendation of the First Committee, resolution 65/52 entitled "Relationship between disarmament and development". In the resolution, the General Assembly, *inter alia*, recalled the provisions of the Final Document of the Tenth Special Session of the General Assembly concerning the relationship between disarmament and development,[214] as well as the adoption on 11 September 1987 of the Final Document of the International Conference on the Relationship between Disarmament and Development.[215] The General Assembly also recalled the report of the Group of Governmental Experts on the relationship between disarmament and development[216] and its reappraisal of this significant issue in the current international context.

On 23 November 2010, the General Assembly adopted resolution 65/10 entitled "Sustained, inclusive and equitable economic growth for poverty eradication and achievement of the Millennium Development Goals". In this resolution, the General Assembly, *inter alia*, recognized the need to further explore policies for sustained, inclusive and equitable economic growth to accelerate poverty eradication, achieve the Millennium Development Goals and promote sustainable development through the follow-up process of the outcome of the high-level plenary meeting of the sixty-fifth session of the General Assembly, and invited Member States, in particular within the United Nations framework, to share best practices and lessons learned in the process of pursuing sustained, inclusive and equitable economic growth.

On 18 October 2010, the General Assembly adopted resolution 65/4 entitled "Sport as a means to promote education, health, development and peace". In this resolution, the General Assembly, *inter alia*, acknowledged the major role of Member States and the United Nations system in promoting human development through sport and physical education, through its country programmes and recalled article 31 of the Convention on the Rights of the Child, 1989[217] outlining a child's right to play and leisure, and the outcome document of the twenty-seventh special session of the General Assembly on children, entitled "A world fit for children",[218] stressing the promotion of physical, mental and emotional health through play and sports. The General Assembly also recalled article 30 of the Convention on the Rights of Persons with Disabilities, 2006,[219] outlining the right of persons with disabilities to take part on an equal basis with others in cultural life, recreation, leisure and sport. The General Assembly recognized the important role played by the International

[214] See resolution S-10/2.

[215] See Report of the International Conference on the Relationship between Disarmament and Development (A/CONF.130/39).

[216] A/59/119.

[217] United Nations, *Treaty Series*, vol. 1577, p. 3.

[218] General Assembly resolution S-27/2 of 10 May 2010, annex.

[219] General Assembly resolution 61/106 of 13 December 2006.

Convention against Doping in Sport[220] in harmonizing the actions taken by Governments in the fight against doping in sport, which are complementary to those undertaken by the sporting movement under the World Anti-Doping Code, and the need for indicators and benchmarks based on commonly agreed standards to assist Governments to enable the consolidation of sport in crosscutting development strategies and the incorporation of sport and physical education in international, regional and national development policies and programmes, as laid out in the final report of the Sport for Development and Peace International Working Group. The General Assembly also welcomed the ongoing efforts undertaken by the newly mandated Sport for Development and Peace International Working Group, which gathered for its inaugural plenary session on 5 May 2010 and the commencement of the substantive work of the first thematic working group on sport and child and youth development. Additionally, the General Assembly urged Member States that have not yet done so to consider signing, ratifying and acceding to the Convention on the Rights of the Child, 1989, the Convention on the Rights of Persons with Disabilities, 2006 and the International Convention against Doping in Sport.

On 22 September 2010, the General Assembly, without reference to a Main Committee, adopted resolution 65/1, entitled "Keeping the promise: united to achieve the Millennium Development Goals", in which the Assembly adopted the outcome document of the High-level Plenary Meeting of the General Assembly on the Millennium Development Goals at its sixty-fifth session which was held in New York 20 to 22 September 2010.

On 20 December 2010, the General Assembly adopted, on the recommendation of the Second Committee, resolution 65/174 entitled "Second United Nations Decade for the Eradication of Poverty (2008–2017)", in which it, *inter alia*, reaffirmed that the objective of the Second United Nations Decade for the Eradication of Poverty (2008–2017) is to support, in an efficient and coordinated manner, the follow-up to the implementation of the internationally agreed development goals, including the Millennium Development Goals, related to the eradication of poverty and to coordinate international support to that end; and that each country must take primary responsibility for its own development and that the role of national policies and strategies cannot be overemphasized in the achievement of sustainable development and poverty eradication. The Assembly called upon the international community to address the root causes of poverty and reaffirmed the need to fulfil all official development assistance commitments, including the commitments made by many developed countries to achieve the target of 0.7 per cent of gross national product for official development assistance to developing countries by 2015, and to reach the level of at least 0.5 per cent of gross national product for development assistance by 2010, as well as a target of 0.15 to 0.20 per cent of gross national product for official development assistance to least developed countries.

On 21 December 2010, the General Assembly adopted, on the recommendation of the Third Committee, resolution 65/214 entitled "Human rights and extreme poverty", in which it, *inter alia*, reaffirmed that extreme poverty and exclusion from society constitute a violation of human dignity and that urgent national and international action is therefore required to eliminate them; that it is essential for States to foster participation by the poor-

[220] United Nations Educational, Scientific and Cultural Organization, *Records of the General Conference, Thirty-third Session, Paris, 3–21 October 2005*, vol. 1 and corrigenda: *Resolutions*, chap. V, resolution 14.

est people in the decision-making process in the societies in which they live, in the promotion of human rights and in efforts to combat extreme poverty; and that the existence of widespread extreme poverty inhibits the full and effective enjoyment of human rights and renders democracy and popular participation fragile.

(*d*) Right of people to self-determination

(i) *Universal realization of the right of peoples to self-determination*

a. Human Rights Council

On 24 March 2010, the Human Rights Council adopted resolution 13/6, entitled "Right of the Palestinian people to self-determination", in which the Council, *inter alia*, was guided by the purposes and principles of the Charter of the United Nations, in particular the provisions of Articles 1 and 55 thereof, which affirm the right of peoples to self-determination, and reaffirmed the need for the scrupulous respect of the principle of refraining in international relations from the threat or use of force, as specified in the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, adopted by the General Assembly in its resolution 2625 (XXV) of 24 October 1970. The Council was also guided by the provisions of article 1 of the International Covenant on Economic, Social and Cultural Rights, 1966[221] and article 1 of the International Covenant on Civil and Political Rights, 1966,[222] which affirm that all peoples have the right to self-determination, and the Universal Declaration of Human Rights,[223] the Declaration on the Granting of Independence to Colonial Countries and Peoples[224] and by the provisions of the Vienna Declaration and Programme of Action, adopted on 25 June 1993 by the World Conference on Human Rights,[225] and in particular part I, paragraphs 2 and 3 thereof, relating to the right of self-determination of all peoples and especially those subject to foreign occupation. The Council recalled the conclusion of the International Court of Justice, in its advisory opinion of 9 July 2004, that the construction of the wall by Israel, the occupying Power, in the Occupied Palestinian Territory, including East Jerusalem, along with measures previously taken, severely impedes the right of the Palestinian people to self-determination, and reaffirmed the inalienable, permanent and unqualified right of the Palestinian people to self-determination, including their right to live in freedom, justice and dignity and to establish their sovereign, independent, democratic and viable contiguous State.

b. General Assembly

On 21 December 2010, the General Assembly adopted, on the recommendation of the Third Committee, resolution 65/201 entitled "Universal realization of the right of peoples to self-determination". In this resolution, the Assembly, *inter alia*, reaffirmed that the

[221] United Nations, *Treaty Series*, vol. 993, p. 3.

[222] *Ibid*., vol. 999, p. 171.

[223] General Assembly resolution 217 (III) A of 10 December 1948.

[224] General Assembly resolution 1514 (XV) of 14 December 1960.

[225] A/CONF.157/23.

universal realization of the right of all peoples, including those under colonial, foreign and alien domination, to self-determination is a fundamental condition for the effective guarantee and observance of human rights and for the preservation and promotion of such rights; 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; and called upon those States responsible to cease immediately their military intervention in and occupation of foreign countries and territories and all acts of repression, discrimination, exploitation and maltreatment, in particular the brutal and inhuman methods reportedly employed for the execution of those acts against the peoples concerned.

On 21 December 2010, the General Assembly adopted, on the recommendation of the Third Committee, resolution 65/202 entitled "The right of the Palestinian people to self-determination". In this resolution, the Assembly reaffirmed the right of the Palestinian people to self-determination, including the right to their independent State of Palestine; and urged all States and the specialized agencies and organizations of the United Nations system to continue to support and assist the Palestinian people in the early realization of their right to self-determination.

(ii) *Mercenaries*

a. Human rights Council

On 30 September 2010, the Human Rights Council adopted resolution 15/12, 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 which the Council, *inter alia*, reaffirmed that the use of mercenaries and their recruitment, financing, protection and training are causes for grave concern to all States and violate the purposes and principles enshrined in the Charter of the United Nations. The Council urged all States to take the necessary steps and to exercise the utmost vigilance against the menace posed by the activities of mercenaries, and to take legislative measures to ensure that their territories and other territories under their control, as well as their nationals, are not used for the recruitment, assembly, financing, training, protection and transit of mercenaries for the planning of activities designed to impede the right to self-determination, to overthrow the Government of any State or to dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the right to self-determination of peoples. The Council furthermore requested all States to exercise the utmost vigilance against any kind of recruitment, training, hiring or financing of mercenaries by private companies offering international military consultancy and security services, and to impose a specific ban on such companies intervening in armed conflicts or actions to destabilize constitutional regimes. Additionally, the Council called upon all States that had not yet become parties to the International Convention against the Recruitment, Use, Financing and Training of Mercenaries, 1989[226] to consider taking the necessary action to do so. The Council also called upon the international community and all States, in accordance with their obligations under international law, to cooperate with

[226] United Nations, *Treaty Series*, vol. 2163, p. 75.

and assist the judicial prosecution of those accused of mercenary activities in transparent, open and fair trials.

b. General Assembly

On 21 December 2010, the General Assembly adopted, on the recommendation of the Third Committee, resolution 65/203 entitled "Use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination", in which the Assembly, *inter alia*, reaffirmed 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 urged all States to take the steps necessary and to exercise the utmost vigilance against the menace posed by the activities of mercenaries and to take legislative measures to ensure that their territories and other territories under their control, as well as their nationals, are not used for the recruitment, assembly, financing, training, protection or transit of mercenaries. The Assembly further requested 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 continue the work already done by the previous Special Rapporteurs on the strengthening of the international legal framework for the prevention and sanction of the recruitment, use, financing and training of mercenaries, taking into account the proposal for a new legal definition of a mercenary drafted by the Special Rapporteur in his report to the Commission on Human Rights at its sixtieth session,[227] including the elaboration and presentation of concrete proposals on possible complementary and new standards aimed at filling existing gaps, as well as general guidelines or basic principles encouraging the further protection of human rights, in particular the right of peoples to self determination, while facing current and emergent treats posed by mercenaries or mercenary-related activities.

(*e*) Economic, social and cultural rights

(i) *Right to food*

a. Human Rights Council

On 24 March 2010, the Human Rights Council adopted resolution 13/4, entitled "The right to food", in which the Council, *inter alia*, recalled the Universal Declaration of Human Rights,[228] which provides that everyone has the right to a standard of living adequate for her or his health and well-being, including food, the Universal Declaration on the Eradication of Hunger and Malnutrition[229] and the United Nations Millennium Declaration,[230] and the provisions of the International Covenant on Economic, Social and Cultural Rights, 1966[231] in which the fundamental right of every person to be free from

[227] See E/CN.4/2004/15, para. 47.

[228] General Assembly resolution 217 (III) A of 10 December 1948.

[229] Adopted on 16 November 1974 by the World Food Conference convened under General Assembly resolution 3180 (XXVIII) of 17 December 1973 and endorsed by General Assembly resolution 3348 (XXIX) of 17 December 1974.

[230] General Assembly resolution 55/2 of 8 September 2000.

[231] United Nations, *Treaty Series*, vol. 993, p. 3.

hunger is recognized. The Council reaffirmed that hunger constitutes an outrage and a violation of human dignity and therefore requires the adoption of urgent measures at the national, regional and international levels for its elimination and called upon States Parties to the International Covenant on Economic, Social and Cultural Rights to fulfil their obligations under article 2, paragraph 1, and article 11, paragraph 2 thereof, in particular with regard to the right to adequate food. Moreover, the Council welcomed the work already done by the Committee on Economic, Social and Cultural Rights in promoting the right to adequate food, in particular its general comment No. 12 (1999) on the right to adequate food (article 11 of the International Covenant on Economic, Social and Cultural Rights, 1966), in which the Committee affirmed, *inter alia*, that the right to adequate food is indivisibly linked to the inherent dignity of the human person and is indispensable for the fulfilment of other human rights enshrined in the International Bill of Human Rights, and is also inseparable from social justice, requiring the adoption of appropriate economic, environmental and social policies at both the national and international levels, oriented to the eradication of poverty and the fulfilment of all human rights for all. The Council also recalled general comment No. 15 (2002) of the Committee on the right to water (articles 11 and 12 of the Covenant), in which the Committee noted, *inter alia*, the importance of ensuring sustainable water resources for human consumption and agriculture in the realization of the right to adequate food.

b. General Assembly

The Special Rapporteur on the right to food, Mr. Olivier De Schutter, submitted his report to the General Assembly in August 2010.[232] The report explores the threats posed by increasing pressures on land and on three categories of land users: indigenous peoples, smallholders and special groups such as herders, pastoralists and fisherfolk. It explores how States and the international community could better respect, protect and fulfil their right to food by giving increased recognition to land as a human right. In the report, the Special Rapporteur, *inter alia*, suggested that the strengthening of customary land tenure systems and the reinforcement of tenancy laws could significantly improve the protection of land users.

On 21 December 2010, the General Assembly adopted, on the recommendation of the Third Committee, resolution 65/220 entitled "The right to food", in which the General Assembly, *inter alia*, reaffirmed that hunger constitutes an outrage and a violation of human dignity and therefore requires the adoption of urgent measures at the national, regional and international levels for its elimination. It also reaffirmed the right of everyone to have access to safe, sufficient and nutritious food, consistent with the right to adequate food and the fundamental right of everyone to be free from hunger, so as to be able to fully develop and maintain his or her physical and mental capacities. The Assembly also urged States that had not yet done so to favourably consider becoming parties to the Convention on Biological Diversity, 1992[233] and to consider becoming parties to the International

[232] A/65/281.

[233] United Nations, *Treaty Series*, vol. 1760, p. 79.

Treaty on Plant Genetic Resources for Food and Agriculture[234] as a matter of priority; and called for the early conclusion and a successful, development-oriented outcome of the Doha Round of trade negotiations of the World Trade Organization as a contribution to creating international conditions that permit the full realization of the right to food.

(ii) *Right to education*

a. Human Rights Council

The Special Rapporteur on the right to education, Mr. Vernor Muñoz, submitted his annual report to the Human Rights Council in April 2010[235] which focuses on the right to education of migrants, refugees and asylum-seekers and addresses six core issues, namely: the legal and normative framework; social and cultural issues; language and curriculum; teachers; accreditation; and learning for life. In the report, the Special Rapporteur, *inter alia*, reminded States that their education systems should conform to the obligations set forth in the International Covenant on Economic, Social and Cultural Rights, 1966[236] and the Convention on the Rights of the Child, 1989,[237] and the Special Rapporteur noted that the mechanisms for the enforcement of the right to education are still at an embryonic and fragile state of development.

On 29 September 2010, the Human Rights Council adopted resolution 15/4 entitled "The right to education: follow-up to Human Rights Council resolution 8/4", in which the Council, *inter alia*, reaffirmed the human right of everyone to education, which is enshrined in, *inter alia*, the Universal Declaration of Human Rights,[238] the International Covenant on Economic, Social and Cultural Rights, 1966,[239] the Convention on the Rights of the Child, 1989,[240] the Convention on the Elimination of All Forms of Discrimination against Women, 1979,[241] the Convention on the Rights of Persons with Disabilities, 2006[242] and other relevant international instruments. The Council also urged States to comply with their obligations under international human rights, refugee and humanitarian law relating to refugees, asylum-seekers and displaced persons, and urged the international community to provide them with protection and assistance in an equitable manner and with due regard to their needs in different parts of the world, in keeping with principles of international solidarity, burden-sharing and international cooperation, to share responsibilities.

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[234] Food and Agriculture Organization of the United Nations, Report of the Conference of the Food and Agriculture Organization of the United Nations, Thirty-first Session, Rome, 2–13 November 2001 (C 2001/REP), appendix D.

[235] A/HRC/14/25.

[236] United Nations, *Treaty Series*, vol. 993, p. 3.

[237] *Ibid.*, vol. 1577, p. 3.

[238] General Assembly resolution 217 (III) A of 10 December 1948.

[239] United Nations, *Treaty Series*, vol. 993, p. 3.

[240] *Ibid.*, vol. 1577, p. 3.

[241] *Ibid.*, vol. 1249, p. 13.

[242] General Assembly resolution 61/106 of 13 December 2006.

(iii) *Right to adequate standard of living, including adequate housing and to be free of adverse effects of toxic waste*

Human Rights Council

In 2010, the Secretary-General submitted to the General Assembly the annual report of 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,[243] pursuant to Human Rights Council resolution 6/27. The main focus of the report was the impact of mega-events on the realization of the right to adequate housing.

(iv) *Access to safe drinking water and sanitation*

a. Human Rights Council

The independent expert on the issue of human rights obligations related to access to safe drinking water and sanitation, Ms. Catarina de Albuquerque, submitted her report to the Human Rights Council on 29 June 2010.[244] The report focuses on the human rights obligations and responsibilities which apply in cases of non-State service provisions of water and sanitation. In the report, the independent expert noted, *inter alia*, that the State cannot exempt itself from its human rights obligations by involving non-State actors in service provisions and that irrespective of responsibilities of the latter, the State remains the primary duty-bearer for the realization of human rights. Parallel to the obligation of the State to protect, the independent expert noted that it is undisputed that service providers must comply with laws and regulations of the State in terms of a general legal obligation. Regarding accountability, the independent expert stated that accountability and access to effective remedies are essential for closing the circle, as service providers and the State can be held accountable for deteriorating services, unmet performance standards, unjustified tariff increases, inadequate social policies or other breaches. According to the independent expert, accountability can be achieved through judicial, quasi-judicial, administrative, political and social mechanisms at the national and international levels. The independent expert concluded, *inter alia*, that States must develop a national plan, including legislation and other appropriate measures, to progressively achieve the full realization of the rights to water and sanitation and that States must not discriminate (*de jure* or *de facto*) against any groups or individuals in the provision of services.

On 30 September 2010, the Human Rights Council adopted resolution 15/9 entitled "Human rights and access to safe drinking water and sanitation". The Council, *inter alia*, reaffirmed the fact that international human rights law instruments, including the International Covenant on Economic, Social and Cultural Rights, 1966,[245] the Convention on the Elimination of All Forms of Discrimination against Women, 1979,[246] the Convention on the Rights of the Child, 1989[247] and the Convention on the Rights of Persons with Dis-

[243] A/65/261.

[244] A/HRC/15/31.

[245] United Nations, *Treaty Series*, vol. 993, p. 3.

[246] *Ibid.*, vol. 1249, p. 13.

[247] *Ibid.*, vol. 1577, p. 3.

abilities, 2006[248] entail obligations for States Parties in relation to access to safe drinking water and sanitation. The Council recalled General Assembly resolution 64/292 of 28 July 2010, in which the Assembly recognized the right to safe and clean drinking water and sanitation as a human right that is essential for the full enjoyment of life and all human rights and affirmed that the human right to safe drinking water and sanitation is derived from the right to an adequate standard of living and inextricably related to the right to the highest attainable standard of physical and mental health, as well as the right to life and human dignity. The Council acknowledged with appreciation the second annual report of the independent expert[249] and took note with interest of her recommendations and clarifications with regard to both the human rights obligations of States and the human rights responsibilities of non-State service providers in the delivery of water and sanitation services. The Council called upon States to, *inter alia*: develop appropriate tools and mechanisms, which may encompass legislation, comprehensive plans and strategies for the sector, including financial ones, to achieve progressively the full realization of human rights obligations related to access to safe drinking water and sanitation, including in currently unserved and underserved areas; adopt and implement effective regulatory frameworks for all service providers in line with the human rights obligations of States, and to allow public regulatory institutions of sufficient capacity to monitor and enforce those regulations; and ensure effective remedies for human rights violations by putting in place accessible accountability mechanisms at the appropriate level.

b. General Assembly

The independent expert on the issue of human rights obligations related to access to safe drinking water and sanitation, Ms. Catarina de Albuquerque, submitted her report to the General Assembly on 6 August 2010.[250] The report focuses on how human rights, in particular the human rights to water and sanitation, can make a contribution to the realization of the Millennium Development Goals. In her report, the independent expert recommended, *inter alia*, that States must put in place accessible, affordable, timely and effective accountability mechanisms and that States are particularly encouraged to ratify the 2008 Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, 1966.[251]

The General Assembly, on 20 December 2010, also adopted resolution 65/153, on the recommendation of the Second Committee, entitled "Follow-up of the International Year of Sanitation, 2008". In this resolution, the Assembly, *inter alia*, called upon all Member States to support the global effort to realize "Sustainable sanitation: the five-year drive to 2015" by redoubling efforts to close the sanitation gap.

On the same day, the General Assembly adopted resolution 65/154, on the recommendation of the Second Committee, entitled "International Year of Water Cooperation, 2013". In this resolution, the Assembly, *inter alia*, decided to declare 2013 the International Year of Water Cooperation and invited the Secretary-General, in cooperation with UN-Water,

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[248] General Assembly resolution 61/106 of 13 December 2006.

[249] A/HRC/15/31.

[250] A/65/254.

[251] General Assembly resolution 63/117 of 10 December 2008.

to take appropriate steps to organize the activities of the Year and to develop the necessary proposals on activities at all levels to support Member States in the implementation of the Year.

(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 27 April 2010.[252] In the report, the Special Rapporteur examined the relationship between the right to the highest attainable standard of health and the criminalization of three forms of private, adult, consensual sexual behaviour: same-sex conduct and sexual orientation, sex work, and HIV transmission. The Special Rapporteur noted that these three kinds of conduct have, at various times, been considered to impact adversely on the broader population, and States have used the protection of public morality and decency, or the protection of the health of the public at large, as justifications to criminalize such acts. The Special Rapporteur considered criminalization to include not only laws that are enacted to render certain conduct deserving of criminal punishment, but additionally, the use of pre-existing criminal laws against certain individuals or communities on the basis of certain characteristics (such as sexuality or occupation). According to the Special Rapporteur, the criminalization of private, consensual sexual conduct between adults infringes on not only the right to health, but also various other human rights, including the rights to privacy and equality.

Regarding same-sex conduct, sexual orientation and gender identity, the Special Rapporteur noted, *inter alia*, that consensual same-sex conduct is a criminal offence in approximately 80 countries and that other laws indirectly prohibit or suppress same-sex conduct, such as anti-debauchery statutes and prohibitions on sex work. According to the Special Rapporteur, these laws represent an infringement of the right to health as outlined in article 12 of the International Covenant on Economic, Social and Cultural Rights, 1966.[253] The Special Rapporteur called upon States to take immediate steps to decriminalize consensual same-sex conduct and to repeal discriminatory laws relating to sexual orientation and gender identity.

Concerning sex work, the Special Rapporteur noted, *inter alia*, that historically, sex work has been criminalized in two major ways, through the criminalization of the selling of sexual services or through the criminalization of various practices around sex work. Alongside the right to health, the International Covenant on Economic, Social and Cultural Rights protects the right to freely chosen, gainful work (article 6), which the State must take steps to safeguard. The Special Rapporteur further noted that article 6 of the Convention on the Elimination of All Forms of Discrimination against Women, 1979[254] does not require States to suppress consensual, adult sex work. Rather, it calls for the suppression of "all forms of traffic in women and exploitation of prostitution of women". The

[252] A/HRC/14/20.

[253] United Nations, *Treaty Series*, vol. 993, p. 3.

[254] *Ibid.*, vol. 1249, p. 13.

term "exploitation of prostitution" has not been defined within the Convention, but is interpreted to refer to exploitation in the context of prostitution. Additionally, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990[255] applies to a significant number of sex workers who travel between States to engage in sex work. Other international instruments, such as the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, 2000,[256] address the trafficking in people, including for the purpose of sexual exploitation. According to the Special Rapporteur, the trafficking and enforced sexual slavery of any person is abhorrent, and undoubtedly merits criminal prohibition. However, the conflation of consensual sex work and sex trafficking in such legislation leads to, at best, the implementation of inappropriate responses that fail to assist either of these groups in realizing their rights, and, at worst, to violence and oppression. The criminalization of sex work infringes on the enjoyment of the right to health, by creating barriers to access by sex workers to health services and legal remedies. Consequently, the decriminalization or legalization of sex work with appropriate regulation forms a necessary part of a right-to-health approach to sex work, and can lead to improved health outcomes for sex workers. The Special Rapporteur therefore called upon States to repeal all laws criminalizing sex work and practices around it, and to establish appropriate regulatory frameworks within which sex workers can enjoy the safe working conditions to which they are entitled.

Regarding HIV transmission, the Special Rapporteur noted that criminalization of HIV transmission has formed a part of the global response to the HIV/AIDS crisis since its inception and takes two forms: first, laws specifically criminalizing the transmission of HIV and, second, through the application of existing criminal law to cases involving exposure to or the transmission of HIV (such as assault). The Special Rapporteur noted that unfortunately, the public health goals of legal sanctions are not realized by criminalization and that the criminalization of HIV/AIDS transmission also infringes on many other human rights, such as the rights to privacy, to be free from discrimination and to equality. Article 12 of the International Covenant on Economic, Social and Cultural Rights, 1966 obliges States to, *inter alia*, take the steps necessary for the prevention, treatment and control of epidemic, endemic, occupational and other diseases and for the creation of conditions that would assure to all medical service and medical attention in the event of sickness. The Special Rapporteur noted that despite commitments to adopt and enact appropriate legislation concerning HIV, States continue to introduce statutes criminalizing HIV transmission and exposure, thereby undermining HIV prevention, treatment, care and support.[257] According to the Special Rapporteur, the criminalization of HIV transmission in the instance of intentional, malicious transmission is the only circumstance in which the use of criminal law in relation to HIV may be appropriate. In such cases, the alleged perpetrator should have acted autonomously, with full knowledge of relevant surrounding circumstances, including but not limited to their HIV status, effectiveness and attempted use of prophylaxis, and so forth. In contrast, criminalization is inappropriate where there

[255] *Ibid*., vol. 2220, p. 3.

[256] *Ibid*., vol. 2237, p. 319.

[257] Report of the Secretary-General. "Declaration of Commitment on HIV/AIDS and Political Declaration on HIV/AIDS: midway to the Millennium Development Goals" (A/62/780, para. 55).

is a lack of culpability. The Special Rapporteur emphasized that any domestic legislation concerning HIV transmission should be based on a right-to-health approach and called upon States to immediately repeal laws criminalizing the unintentional transmission of or exposure to HIV, and to reconsider the use of specific laws criminalizing intentional transmission of HIV, as domestic laws of the majority of States already contain provisions which allow for prosecution of these exceptional cases.

On 6 October 2010, the Human Rights Council adopted resolution 15/22, entitled "Right of everyone to the enjoyment of the highest attainable standard of physical and mental health". In the resolution, the Council, *inter alia*, decided to extend the mandate of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, for a further period of three years. The Council also called upon States to ensure that relevant legislation, regulations and national and international policies take due account of the realization of the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and to consider ratifying the Framework Convention on Tobacco Control, 2003[258] adopted at the fifty-sixth World Health Assembly.

b. General Assembly

The Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health submitted his annual report to the General Assembly on 6 August 2010.[259] The report focused on demand-side measures related to drug control—those primarily concerned with use and possession of drugs—and their various impacts on the enjoyment of the right to health. The treaties that form the core legal framework of the United Nations international drug regime are: (a) the Single Convention on Narcotic Drugs, 1961, as amended by the 1972 Protocol;[260] (b) the Convention on Psychotropic Substances, 1971;[261] and (c) the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988.[262] According to the Special Rapporteur, these treaties currently bring hundreds of illicit substances under international control, criminalizing virtually every aspect of the unauthorized production and distribution of those substances, although production, distribution and possession for medical and/or scientific purpose is permitted. The treaties have been ratified by over 181 States and have guided the development of drug policies throughout the world. The Special Rapporteur noted that the primary goal of the international drug control regime is the protection of the health and welfare of mankind, through decreasing the illegal use and supply of controlled substances while ensuring access to controlled substances for medical and scientific purposes.

In the report, the Special Rapporteur recommended that Members States should, *inter alia*: decriminalize or de-penalize possession and use of drugs; and amend laws, regulations and policies to increase access to controlled essential medicines. The Special

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[258] United Nations, *Treaty Series*, vol. 2302, p. 166.

[259] A/65/255.

[260] United Nations, *Treaty Series*, vol. 976, p. 105.

[261] *Ibid.*, vol. 1019, p. 175.

[262] *Ibid.*, vol. 1582, p. 95.

Rapporteur recommended that the United Nations drug control bodies should, *inter alia*: integrate human rights into the response to drug control in laws, policies and programmes; consider the creation of a permanent mechanism, such as an independent commission, through which international human rights actors can contribute to the creation of international drug policy, and monitor national implementation; and consider the creation of an alternative drug regulatory framework in the long term, based on a model such as the Framework Convention on Tobacco Control, 2003.[263]

On 9 December 2010, the General Assembly adopted, without reference to a Main Committee, resolution 65/95 entitled "Global Health and Foreign Policy". In this resolution, the Assembly, *inter alia*, recognized the need for inclusive, transparent and effective multilateral approaches to manage global challenges, and in this regard reaffirms the central role of the United Nations in ongoing efforts to find common solutions to such challenges; and decided to include in the provisional agenda of its sixty-sixth session, under the item entitled "Strengthening of the United Nations system", a new sub-item entitled "Central role of the United Nations system in global governance".

(*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 on 9 February 2010.[264] In his report, the Special Rapporteur gave an overview of the mandate and his activities, and the main observations he has made over five years of fact-finding and research. The Special Rapporteur observed that torture remains a global phenomenon and is practised widely in many countries, the major structural reason being the malfunctioning of the administration of justice and lack of respect for safeguards. The Special Rapporteur maintained that, in practice, most States Parties to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984,[265] have failed to fulfil their obligations, such as criminalizing torture, investigating allegations, prosecuting perpetrators and providing redress for victims of torture.

On 1 November 2010, Mr. Juan Méndez was appointed as Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

On 26 March 2010, the Human Rights Council adopted resolution 13/19, entitled "Torture and other cruel, inhuman or degrading treatment or punishment: the role and responsibility of judges, prosecutors and lawyers", in which the Council, *inter alia*, recalled that freedom from torture and other cruel, inhuman or degrading treatment or punishment is a non-derogable right that must be protected under all circumstances, including during states of emergency and in times of international or internal armed conflict or disturbance. The Council stressed that legal and procedural safeguards against such acts must

[263] *Ibid*., vol. 2302, p. 166.

[264] A/HRC/13/39.

[265] United Nations, *Treaty Series*, vol. 1465, p. 85.

not be subject to measures that would circumvent this right, and emphasized that judges, prosecutors and lawyers play a critical role in safeguarding this right. The Council was convinced that an independent and impartial judiciary, an independent legal profession and the integrity of the judicial system are essential prerequisites for the protection of human rights, including the right to be free from torture and other cruel, inhuman or degrading treatment or punishment, and for the application of the rule of law and for ensuring a fair trial and that there is no discrimination in the administration of justice. The Council condemned all forms of torture and other cruel, inhuman or degrading treatment or punishment, and emphasized that States must take persistent, determined and effective measures to prevent and combat all acts of torture and other cruel, inhuman or degrading treatment or punishment. The Council furthermore stressed that all such acts must be made offences under domestic criminal law and called upon States to ensure accountability.

b. General Assembly

The General Assembly also adopted, on recommendation of the Third Committee, resolution 65/204 on 21 December 2010, entitled "Committee against Torture", in which the Assembly, *inter alia*, decided to authorize the Committee to meet for an additional week per session as a temporary measure, with effect from May 2011 until the end of November 2012, in order to address the backlog of reports of States Parties and individual complaints awaiting consideration.

On the same day, the General Assembly adopted resolution 65/205 entitled "Torture and other cruel, inhuman or degrading treatment or punishment". In this resolution, the Assembly, *inter alia*, condemned all forms of torture and other cruel, inhuman or degrading treatment or punishment; and took note of the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Principles)[266] as a useful tool in efforts to prevent and combat torture and of the updated set of principles for the protection of human rights through action to combat impunity.[267]

(ii) *Arbitrary detention and extrajudicial, summary and arbitrary execution*

a. Human Rights Council

The Working Group on Arbitrary Detention submitted its annual report to the Human Rights Council on 19 January 2011,[268] regarding thematic issues to which it had devoted its attention in 2010. In the report, the Working Group, *inter alia*, addressed the application of international human rights law to situations of armed conflict and stated that norms of international human rights law protecting individuals against arbitrary detention shall be complied with by Governments even during periods of armed conflict. The Working Group also addressed the issue of secret detention in the context of countering terrorism and emphasized that no jurisdiction should allow for individuals to be deprived of their

[266] General Assembly resolution 55/89 of 4 December 2000, annex.

[267] See E/CN.4/2005/102/Add.1.

[268] A/HRC/16/47.

liberty in secret for potentially indefinite periods without the possibility of resorting to legal procedures, including *habeas corpus*.

The Special Rapporteur on extrajudicial, summary or arbitrary executions, Mr. Philip Alston, submitted his annual report to the Human Rights Council on 20 May 2010[269] which analyses the activities and working methods of the mandate over the past six years. The addenda to the report contain three in-depth studies on: (a) accountability for killings by police; (b) election-related killings; and (c) targeted killings.

On 1 August 2010, Mr. Christof Heyns was appointed as Special Rapporteur on extrajudicial, summary or arbitrary executions.

On 30 September 2010, the Human Rights Council adopted resolution 15/18 entitled "Arbitrary detention". In the resolution, the Council, *inter alia*, encouraged all States to take appropriate measures to ensure that their legislation, regulations and practices remain in conformity with relevant international standards and the applicable international legal standards and to respect and promote the right of anyone arrested or detained on a criminal charge to be brought before a judge or other officer authorized by law to exercise judicial power, and to be entitled to trial within a reasonable time or release. The Council also decided to extend the mandate of the Working Group on Arbitrary Detention for a further period of three years.

b. General Assembly

On 21 December 2010, the General Assembly adopted resolution 65/208, on the recommendation of the Third Committee, entitled "Extrajudicial, summary or arbitrary executions", in which the Assembly, *inter alia,* once again strongly condemned all the extrajudicial, summary or arbitrary executions that continue to occur throughout the world. It demanded that all States ensure that the practice of extrajudicial, summary or arbitrary executions be brought to an end and that they take effective action to prevent, combat and eliminate the phenomenon in all its forms and manifestations; and affirmed the obligation of States, in order to prevent extrajudicial, summary or arbitrary executions, to protect the lives of all persons deprived of their liberty in all circumstances and to investigate and respond to deaths in custody.

(iii) *Enforced disappearances*

a. Human Rights Council

The Working Group on Enforced or Involuntary Disappearances submitted its annual report to the Human Rights Council on 26 January 2011,[270] which reflects communications and cases examined by the Working Group during its three sessions in 2010. In December 2010, the Working Group also submitted a report to the Human Rights Council on best practices on enforced disappearances in domestic criminal legislation,[271] in order to assist States to enhance existing and develop new legislation on enforced disappearances.

[269] A/HRC/14/24 (covering activities of the Special Rapporteur in 2009 and the first four months of 2010).

[270] A/HRC/16/48.

[271] A/HRC/16/48/Add.3.

On 18 June 2010, the Human Rights Council adopted resolution 14/10 entitled "Enforced or involuntary disappearances". In the resolution, the Council, *inter alia*, acknowledged the adoption of the International Convention for the Protection of All Persons from Enforced Disappearance by the General Assembly in its resolution 61/177 of 20 December 2006, and recognized that the entry into force of the Convention through its ratification by twenty States, and its implementation, would make a significant contribution to ending impunity and to the promotion and protection of all human rights for all. The Council also acknowledged that acts of enforced disappearance may amount to crimes against humanity as defined in the Rome Statute of the International Criminal Court, 1998[272] and urged Governments to continue their efforts to elucidate the fate of disappeared persons and to ensure that competent authorities in charge of investigation and prosecution are provided with adequate means and resources to resolve cases and bring perpetrators to justice. The Council also called upon States that had not yet done so to consider signing the Convention for the Protection of All Persons from Enforced Disappearance, 2006 as well as to consider the option provided for in articles 31 and 32 of the Convention regarding the Committee on Enforced Disappearances, with a view to its entry into force by September 2010.[273]

b. General Assembly

On 21 December 2010, the General Assembly adopted, on the recommendation of the Third Committee, resolution 65/209 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, 2006 and also welcomed the fact that eighty-seven States have signed the Convention and nineteen have ratified or acceded to it; and called upon States that had not yet done so to consider signing, ratifying or acceding to the Convention as a matter of priority, as well as to consider the option provided for in articles 31 and 32 of the Convention regarding the Committee on Enforced Disappearances. The Assembly further decided to declare 30 August the International Day of the Victims of Enforced Disappearances, to be observed beginning in 2011, and called upon Member States, the United Nations system and other international and regional organizations, as well as civil society, to observe this Day.

(iv) *Integration of human rights of women and a gender perspective*[274]

a. Human Rights Council

On 18 June 2010, the Human Rights Council adopted resolution 14/12 entitled "Accelerating efforts to eliminate all forms of violence against women: ensuring due diligence in prevention". In this resolution, the Council, *inter alia*, called upon States to enact and,

[272] United Nations, *Treaty Series*, vol. 2187, p. 3.

[273] The Convention for the Protection of All Persons from Enforced Disappearance entered into force on 23 December 2010, in accordance with article 39(1) which reads as follows: "This Convention shall enter into force on the thirtieth day after the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession".

[274] For more information on the rights of women, see section 6 of this chapter.

where necessary, reinforce or amend domestic legislation and take measures to enhance the protection of victims, to investigate, prosecute, punish and redress, including by ensuring access to adequate, effective, prompt and appropriate remedies, the wrongs to women and girls subjected to any form of violence, and to ensure that such legislation conforms with relevant international human rights instruments and international humanitarian law, to abolish existing laws, regulations, customs and practices that constitute discrimination against women, and to remove gender bias in the administration of justice. The Council also urged States to take appropriate legislative and policy steps to investigate, prosecute and punish the perpetrators of all forms of rape.

b. General Assembly

On 21 December 2010, the General Assembly adopted, on the recommendation of the Third Committee, resolution 65/187 entitled "Intensification of efforts to eliminate all forms of violence against women". In this resolution, the Assembly, *inter alia*, strongly condemned all acts of violence against women and girls, whether those acts were perpetrated by the State, by private persons or by non-State actors, and called for the elimination of all forms of gender-based violence in the family, within the general community and where perpetrated or condoned by the State; and urged States to continue to develop their national strategy, translating it into concrete programmes and actions, and a more systematic, comprehensive, multisectoral and sustained approach, aimed at eliminating all forms of violence against women, including by achieving gender equality and the empowerment of women, and by increasing the focus on prevention in the laws, policies and programmes and their implementation, monitoring and evaluation, so as to ensure the optimal use of available instruments.

On 21 December 2010, the General Assembly adopted, on the recommendation of the Third Committee, resolution 65/191 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,* reaffirmed the Beijing Declaration and Platform for Action adopted at the Fourth World Conference on Women[275] and the outcome of the twenty-third special session of the General Assembly,[276] as well as the declaration adopted on the occasion of the ten-year review and appraisal of the implementation of the Beijing Declaration and Platform for Action at the forty-ninth session of the Commission on the Status of Women; and welcomed the establishment of UN Women.

(v) *Trafficking*

a. Human Rights Council

The Special Rapporteur on trafficking in persons, especially women and children, Ms. Joy Ngozi Ezeilo, submitted her annual report to the Human Rights Council in May

[275] *Report of the Fourth World Conference on Women, Beijing, 4–15 September 1995* (United Nations publication, Sales No. E.96.IV.13), chap. I, resolution 1, annexes I and II.

[276] General Assembly resolution S-23/2, annex, and resolution S-23/3, annex.

2010.[277] The annual report contains, *inter alia*, a description of main regional and subregional cooperation mechanisms in promoting a human rights-based approach to combating trafficking in persons. In the report, the Special Rapporteur recommended that regional cooperation instruments and plans of action should promote the ratification of international human rights law instruments, including the Palermo Protocol.[278] In particular, they should contain a commitment by all countries to adopt the Palermo Protocol definition of human trafficking, which covers trafficking of all persons, women, children and men, and in all its forms, including for sexual exploitation, labour exploitation, slavery or practices similar to slavery, organ transplantation and other exploitative reasons. With regard to the regional mechanisms' institutional frameworks, the Special Rapporteur recommended that these should include, *inter alia*, a solid foundation to build from, such as a Convention, a Memorandum of Understanding or a Declaration, followed by a comprehensive regional work plan. The Special Rapporteur also recommended the establishment of a regional monitoring body to meet regularly to review the degree of implementation of normative instruments and work plans and provide recommendations to States. According to the Special Rapporteur, the role of regional organizations is also to promote an effective prosecutorial and judicial response, with a victim-centred approach. To that effect, regional organizations should, *inter alia*, promote the establishment of national legal frameworks to criminalize trafficking, putting the protection of victims (and witnesses) and their access to effective legal remedies and compensation at the centre of the prosecutorial and judicial response.

On 17 June 2010, the Human Rights Council adopted resolution 14/2 entitled "Trafficking in persons, especially women and children: regional and subregional cooperation in promoting a human rights-based approach to combating trafficking in persons". In this resolution, the Council, *inter alia*, recognized the challenges to combating trafficking in persons owing to the lack of adequate legislation and implementation of existing legislation, and noted further efforts to consider a possible review mechanism on the implementation of the United Nations Convention against Transnational Organized Crime, 2000[279] and the Protocols thereto. The Council reiterated its concern at the high level of impunity enjoyed by traffickers and their accomplices and the denial of rights and justice to victims of trafficking. The Council called upon Governments to consider signing and ratifying relevant United Nations legal instruments such as the United Nations Convention against Transnational Organized Crime and the Protocols[280] thereto. The Council also called upon

[277] A/HRC/14/32 (the annual report covers the period from April 2009 until March 2010).

[278] The Palermo Protocol refers to the three protocols supplementing the Convention against Transnational Organized Crime, 2000 (United Nations, *Treaty Series*, vol. 2225, p. 209), namely, the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition (United Nations, *Treaty Series*, vol. 2326, p. 237), the Protocol against the Smuggling of Migrants by Land, Sea and Air (United Nations, *Treaty Series*, vol. 2241, p. 507), and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (United Nations, *Treaty Series*, vol. 2237, p. 319).

[279] United Nations, *Treaty Series*, vol. 2225, p. 209.

[280] The Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition (United Nations, *Treaty Series*, vol. 2326, p. 237), the Protocol against the Smuggling of Migrants by Land, Sea and Air (United Nations, *Treaty Series*, vol. 2241, p. 507), and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (United Nations, *Treaty Series*, vol. 2237, p. 319).

Governments to promote the implementation of legally binding international instruments on combating trafficking in persons, including the 2000 Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children and to promote the criminalization of all forms of trafficking as defined therein.

b. General Assembly

The Special Rapporteur on trafficking in persons, especially women and children, Ms. Joy Ngozi Ezeilo, submitted her interim annual report to the General Assembly in August 2010.[281] The report includes a thematic focus on the prevention of trafficking in persons and an analysis of various aspects of measures aimed at preventing such trafficking. In the report, the Special Rapporteur stated, *inter alia*, that the protection of human rights of migrants is of paramount importance in preventing exploitation that leads to trafficking. Thus, States should respect, protect and promote the human rights of migrants, particularly labour rights in sectors where such protection has traditionally been weak or absent, such as domestic work. To that end, the Special Rapporteur recommended that States should sign, ratify and enforce all relevant human rights instruments, in particular the Palermo Protocol[282] and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.[283]

On 30 July 2010, the General Assembly adopted, without reference to a Main Committee, resolution 64/293 entitled "United Nations Global Plan of Action against Trafficking in Persons". In this resolution, the Assembly, *inter alia*, adopted, in an annex to the resolution, the United Nations Global Plan of Action to Combat Trafficking in Persons. The Global Plan of Action focuses the actions of the United Nations Member States on prevention of trafficking in persons; protection of and assistance to victims of trafficking in persons; prosecution of crimes of trafficking in persons; and strengthening of partnerships against trafficking in persons. In the same resolution, the Assembly decided to formally launch the Plan of Action at a one-day, high-level meeting of the General Assembly; and urged Member States, the United Nations and others to fully and effectively implement the relevant provisions of the Plan of Action and the activities outlined therein. The Assembly also decided to establish the United Nations Voluntary Trust Fund for Victims of Trafficking in Persons, Especially Women and Children, and requested the Secretary-General to take all necessary measures for its effective operation. Finally, it decided to appraise in 2013 the progress achieved in the implementation of the Plan of Action.

On 21 December 2010, the General Assembly adopted, on the recommendation of the Third Committee, resolution 65/190 entitled "Trafficking in women and girls". In this resolution, the Assembly, *inter alia*, urged Governments to sign, ratify and implement the

[281] A/65/288 (the report covers the period from 1 October 2009 to 30 September 2010).

[282] The Palermo Protocol refers to the three protocols supplementing the Convention against Transnational Organized Crime (United Nations, *Treaty Series*, vol. 2225, p. 209), namely, the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition (United Nations, *Treaty Series*, vol. 2326, p. 237), the Protocol against the Smuggling of Migrants by Land, Sea and Air (United Nations, *Treaty Series*, vol. 2241, p. 507), and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (United Nations, *Treaty Series*, vol. 2237, p. 319).

[283] United Nations, *Treaty Series*, vol. 2220, p. 3.

relevant conventions and to implement the United Nations Global Plan of Action to Combat Trafficking in Persons and the activities outlined therein.

(*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 20 December 2010.[284] In her report, the Special Rapporteur described the activities carried out by her since her last report in September 2009.

On 24 March 2010, the Human Rights Council adopted resolution 13/3 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*, bore in mind paragraph 33 (p) of General Assembly resolution 64/146, in which the Assembly called upon States to ensure that child-sensitive procedures were made available to children and their representatives so that children had access to means of facilitating effective remedies for any breaches of any of their rights arising from the Convention on the Rights of the Child, 1989[285] through independent advice, advocacy and complaint procedures, including justice mechanisms, and that their views were heard when they were involved or their interests were concerned in judicial or administrative procedures in a manner consistent with procedural rules of national law. The Council also took note of the report on its first session of the Open-ended Working Group held in December 2009 to explore the possibility of elaborating an optional protocol to the Convention on the Rights of the Child to provide a communications procedure complementary to the reporting procedure under the Convention.[286]

On 26 March 2010, the Human Rights Council adopted resolution 13/20 entitled "Rights of the child: the fight against sexual violence against children". In this resolution, the Council, *inter alia*, emphasized that the Convention on the Rights of the Child, 1989[287] must constitute the standards in promotion and protection of the rights of the child and stressed the importance of the Optional Protocols thereto on the sale of children, child prostitution and child pornography,[288] and on the involvement of children in armed conflict,[289] in particular in the fight against sexual violence against children. The Council urged all States to take effective and appropriate legislative and other measures or to strengthen, where they exist, legislation and policy established to prohibit, criminalize and eliminate all forms of sexual violence and sexual abuse against children in all settings. The Council also urged all States to ensure accountability and seek to end impunity of perpetrators of sexual violence and abuse against children in all settings, including in conflict and emergencies, and to investigate and prosecute such acts and impose appropri-

[284] A/HRC/16/57.

[285] United Nations, *Treaty Series*, vol. 1577, p. 3.

[286] A/HRC/13/43.

[287] United Nations, *Treaty Series*, vol. 1577, p. 3.

[288] *Ibid.*, vol. 2171, p. 227.

[289] *Ibid.*, vol. 2173, p. 222.

ate penalties, commensurate with those for other serious crimes, recognizing that persons convicted of sexual violence against children should be prevented from working with children until such a time as national mechanisms establish that they no longer pose a risk of harm to children. The Council also called upon States to prevent, criminalize, punish and eradicate the practice of sale in children, child slavery, commercial sexual exploitation of children, child prostitution and child pornography, including the use of the Internet and new technologies for those practices, and to take effective measures, as appropriate, against the criminalization of children who are victims of exploitation. The Council condemned in the strongest terms rape and other forms of sexual violence committed against children in situations of armed conflict, and in this regard, called upon all parties to armed conflict to comply strictly with their obligations under applicable international law to protect children in armed conflict, urged them to immediately end such practices and to take all possible measures to protect boys and girls from rape and all forms of sexual violence. The Council also called upon States to assist child victims of these violations in situations of armed conflict and to seek to end impunity for perpetrators by ensuring rigorous investigation and prosecution of such crimes.

b. General Assembly

The Special Rapporteur on the sale of children, child prostitution and child pornography, Ms. Najat M'jid Maalla, submitted her annual report to the General Assembly in August 2010.[290] In the context of the tenth anniversary of the adoption of the 2000 Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography,[291] the report focused on remaining challenges with respect to awareness and understanding of these problems and the actions undertaken to address them. The Special Rapporteur noted, *inter alia*, that despite numerous legislative reforms having been undertaken, legal gaps persist in many countries, and law enforcement disparities persist not only between countries but also within countries. The Special Rapporteur also noted with respect to the establishment by 2013[292] of an effective and accessible system for reporting, follow up and support for child victims of suspected or actual incidents of sexual exploitation, that many countries do not yet have such a system. Conclusively, the Special Rapporteur stated, *inter alia*, that States have taken some measures to implement the Optional Protocol but nevertheless, many challenges remain with respect to gauging the full scope of these offences, preventing them and providing effective protection to children. The Special Rapporteur recommended a re-evaluation of approaches adopted and effective implementation and monitoring of recommendations. According to the Special Rapporteur, establishing protection systems that safeguard the best interest of the child and cover (i) prevention; (ii) detection, and the care and medical, psychological, social and legal follow-up of the child; and (iii) the promotion of the right of the child would help to ensure the implementation and monitoring of the recommendations of the Committee on the Rights of the Child, special procedures and the Rio de Janeiro Declaration and Call for Action to Prevent and Stop Sexual Exploitation of Children and Adolescents. The implementation of such a system relies on, *inter alia*, ratification of the 2000 Optional Protocol

[290] A/65/221 (the report covers the period from September 2009 to July 2010).

[291] United Nations, *Treaty Series*, vol. 2171, p. 227.

[292] Rio Declaration and Call for Action, 2008.

to the Convention on the Rights of the Child on the involvement of children in armed conflict and other relevant international and regional instruments by those countries that have not yet done so, and on a protective legislative framework.

On 21 December 2010, the General Assembly adopted, on the recommendation of the Third Committee, resolution 65/197 entitled "Rights of the Child". In this resolution, the Assembly, *inter alia*, urged States that had not yet done so to become parties to the Convention on the Rights of the Child[293] and the Optional Protocols thereto[294] as a matter of priority and to implement them fully. The Assembly also reaffirmed its earlier findings with regard to, *inter alia*, non-discrimination of children; the economic and social well-being of children; elimination of violence against children; prevention and eradication of the sale of children, child prostitution and child pornography; children affected by armed conflict; chilled labour; and the implementation of child rights in early childhood.

(*h*) Migrants

a. Human Rights Council

On 30 September 2010, the Human Rights Council adopted resolution 15/16 entitled "Human rights of migrants". In this resolution, the Council, *inter alia*, bore in mind the obligations of States under international law, as applicable, to exercise due diligence to prevent crimes against migrants, to investigate and punish perpetrators and, in accordance with applicable law, to rescue victims and to provide for their protection, and that not doing so violates and impairs or nullifies the enjoyment of the human rights and fundamental freedoms of migrants. The Council called upon States that had not yet done so to consider signing and ratifying or acceding to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990[295] and called upon States Parties to the United Nations Convention against Transnational Organized Crime, 2000[296] and the supplementing protocols thereto[297] to fully implement them. The Council furthermore requested States to, *inter alia*, adopt concrete measures to prevent violations of the human rights of migrants while in transit, including in ports and airports and at borders and migration checkpoints, to train public officials who work in those facilities and in border areas to treat migrants and their families respectfully and in accordance with the law, and to prosecute, in conformity with applicable law, any act of violation of the human rights of migrants and their families, such as arbitrary detention, torture and violations of the right to life.

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[293] United Nations, *Treaty Series*, vol. 1577, p. 3.

[294] *Ibid.*, vol. 2171, p. 227 and 2173, p. 222.

[295] *Ibid.*, vol. 2220, p. 3.

[296] *Ibid.*, vol. 2225, p. 209.

[297] The Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition (United Nations, *Treaty Series*, vol. 2326, p. 237), the Protocol against the Smuggling of Migrants by Land, Sea and Air (United Nations, *Treaty Series*, vol. 2241, p. 507), and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (United Nations, *Treaty Series*, vol. 2237, p. 319).

b. General Assembly

The Special Rapporteur on human rights of migrants, Mr. Jorge Bustamante, submitted his annual report to the General Assembly in August 2010.[298] The report focused on the impact of criminalization of migration on the protection and enjoyment of human rights. In the report, the Special Rapporteur recommended, *inter alia*, that States that have not done so should incorporate the applicable legal framework on human rights, the protection of the child, the protection of migrant workers and their families, the protection of asylum-seekers and refugees, the fight against transnational organized crime and the elimination of contemporary forms of slavery into their national laws and policies as well as into their bilateral, subregional and regional agreements for migration management. The Special Rapporteur also recommended that States should remove laws, policies, plans and programmes aimed at criminalizing irregular migration and should not consider breaches of immigration law a crime or punish such breaches with detention. Furthermore, the Special Rapporteur recommended that States should not resort to collective deportations, which are contrary to international law and human rights standards. Regarding immigration detention, the Special Rapporteur stated that the causes and circumstances leading to the deprivation of the liberty of migrants should be defined by laws that should provide adequate and effective remedies, including judicial review. Furthermore, the Special Rapporteur stated that States should consider and use alternatives to immigration detention in accordance with international law and human rights standards.

On 21 December 2010, the General Assembly adopted, on the recommendation of the Third Committee, resolution 65/212 entitled "Protection of migrants". In this resolution, the Assembly, *inter alia*, called upon States to promote and protect effectively the human rights and fundamental freedoms of all migrants, regardless of their migration status, especially those of women and children, and to address international migration through international, regional or bilateral cooperation and dialogue and through a comprehensive and balanced approach, recognizing the roles and responsibilities of countries of origin, transit and destination in promoting and protecting the human rights of all migrants, and avoiding approaches that might aggravate their vulnerability; and reaffirmed the rights set forth in the Universal Declaration of Human Rights[299] and the obligations of States under the International Covenants on Human Rights,[300] and the duty of States to effectively promote and protect the human rights and fundamental freedoms of all migrants, especially those of women and children, regardless of their immigration status, in conformity with the Universal Declaration of Human Rights and the international instruments to which they are party.

(*i*) Internally displaced persons

a. Human Rights Council

On 5 January 2010, the Representative of the Secretary-General on the human rights of internally displaced persons, Mr. Walter Kälin, presented his final report to the Human

[298] A/65/222 (the report covers the period between June 2009 and July 2010).

[299] General Assembly resolution 217 A (III) of 10 December 1948.

[300] General Assembly resolution 2200 A (XXI) of 16 December 1966, annex.

Rights Council.[301] In his report, the Representative, *inter alia*, noted that year after year, a large number of people are arbitrarily displaced in violation of international human rights and humanitarian law as restated in the Guiding Principles on Internal Displacement.[302] One of the most effective ways to stop arbitrary displacement from occurring is, according to the Representative, for all relevant actors to scrupulously respect their obligations and to put an end to impunity, ensuring that those responsible for carrying out arbitrary displacement and other violations of the rights of the displaced are held accountable The Representative was pleased to note an increasing trend to criminalize the most atrocious forms of arbitrary displacement, including ethnic cleansing and noted that the Rome Statute of the International Criminal Court, 1998[303] recognizes that certain types of arbitrary displacement may amount to war crimes or crimes against humanity.[304] The Representative also noted that the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa, 2009 (Kampala Convention)[305] obliges States to hold members of armed groups criminally responsible for violations of the rights of the displaced, including arbitrary displacement.[306]

On 17 June 2010, the Human Rights Council adopted resolution 14/6 entitled "Mandate of the Special Rapporteur on human rights of internally displaced persons". In the resolution, the Council, *inter alia*, decided to extend the mandate of the special procedure on the human rights of internally displaced persons as a special Rapporteur for a period of three years. The Representative of the Secretary-General on the human rights of internally displaced persons, Mr. Walter Kälin, ended his second term in 2010 and Mr. Chaloka Beyani was appointed as Special Rapporteur on the human rights of internally displaced persons by the Human Rights Council in September 2010 and took up his functions as of November that year.

b. General Assembly

The Representative of the Secretary-General on the human rights of internally displaced persons, Mr. Walter Kälin, submitted his annual report to the General Assembly in August 2010.[307] The report includes a thematic section on the primary duty of the State to provide humanitarian assistance and the corresponding rights of internally displaced persons. The Representative, *inter alia*, called upon all Member States to shape a rule-based framework to international humanitarian assistance, taking into account the Guiding

[301] A/HRC/13/21.

[302] See Guiding Principle 6 (E/CN.4/1998/53/Add.2 of 11 February 1998).

[303] United Nations, *Treaty Series*, vol. 2187, p. 3.

[304] The Rome Statute of the International Criminal Court recognizes that deportation or forcible transfer of a population may amount to a war crime or crime against humanity (article 7 (1) (d) and 8 (2) (a) (vii) and (b) (viii)). In non-international armed conflicts, it may also be a war crime to order the displacement of the civilian population for reasons related to the conflict, unless the security of the civilians involved or imperative military reasons so demand (see art. 8 (2) (e) (viii)).

[305] Adopted by a Special Summit of the African Union, held in Kampala, Uganda, on 22 October 2009.

[306] Article 7, paras. 4 and 5 (a) of the Kampala Convention.

[307] A/65/282 (the report covers the period between August 2009 and July 2010).

Principles on Internal Displacement[308] as well as the Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance.[309] The Representative called on all Member States to, in particular, explicitly recognize in relevant national laws, policies and administrative and military instructions, the right of internally displaced persons and others affected by conflict or disaster to request and receive humanitarian assistance, and the corresponding obligation of the State to ensure assistance.

On 21 December 2010, the General Assembly adopted, on the recommendation of the Third Committee, resolution 65/193 entitled "Assistance to refugees, returnees and displaced persons". In the resolution, the Assembly, *inter alia*, welcomed the adoption and ongoing ratification process of the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa, 2009 (Kampala Convention).[310] The Assembly noted with appreciation the Pact on Security, Stability and Development in the Great Lakes Region, adopted by the International Conference on the Great Lakes Region in 2006,[311] and its instruments, in particular two of the protocols to the Pact which are relevant to the protection of displaced persons, namely, the Protocol on the Protection of and Assistance to Internally Displaced Persons and the Protocol on the Property Rights of Returning Persons.

(*j*) Minorities

a. Human Rights Council

On 16 December 2010, the Independent Expert on Minority Issues, Ms. Gay McDougall, presented her report to the Human Rights Council.[312] In her report, the Independent Expert included a thematic study on the role of minority rights protection in promoting stability and conflict prevention. At the national level, the Independent Expert recommended, *inter alia*, that to fulfil their human rights obligations and also as a measure to increase stability and improve inclusive governance, States should implement fully the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities,[313] and implement comprehensive anti-discrimination legislation. Legislation must provide for effective, transparent enforcement mechanisms which can be accessed easily by all.

On 25 March 2010, the Council also adopted resolution 13/12, entitled "Rights of persons belonging to national or ethnic, religious and linguistic minorities", in which the Council, *inter alia*, urged States to review, enact and amend their legislation, where necessary, as well as their educational policies and systems, to ensure the realization of the right to education, as set out in the Universal Declaration of Human Rights,[314] to eliminate

[308] E/CN.4/1998/53/Add.2 of 11 February 1998.

[309] The Guidelines were adopted at the thirtieth International Conference of the Red Cross and Red Crescent Movement, held in Geneva from 26 to 30 November 2007 (30IC/07/R4 annex).

[310] Available at www.africa-union.org.

[311] Available at www.icglr.org.

[312] A/HRC/16/45.

[313] General Assembly resolution 47/135 of 18 December 1992.

[314] General Assembly resolution 217 (III) A of 10 December 1948.

discrimination and to provide for equal access to quality education for persons belonging to minorities, in particular minority children, while protecting their identity, as enshrined in the Declaration, and promoting integration, social inclusion and a prosperous and stable society.

(*k*) Indigenous issues

a. Human Rights Council

On 19 July 2010, 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.[315] The Special Rapporteur devoted the second half of the report to an analysis of corporate responsibility with respect to indigenous rights, in the framework of the international community's expectations in that regard.

On 30 September 2010, the Human Rights Council adopted resolution 15/7 entitled "Human rights and indigenous peoples". In the resolution, the Council, *inter alia*, encouraged those States that had not yet ratified or acceded to the Indigenous and Tribal Peoples Convention of 1989 (No. 169)[316] of the International Labour Organization to consider doing so and to consider supporting the United Nations Declaration on the Rights of Indigenous Peoples.[317]

On the same day, the Council also adopted resolution 15/14 entitled "Human rights and indigenous peoples: mandate of the Special Rapporteur on the rights of indigenous peoples". In the resolution, the Council, *inter alia*, decided to extend for a period of three years the mandate of the Special Rapporteur on the rights of indigenous peoples.

b. General Assembly

On 21 December 2010, the General Assembly adopted, on the recommendation of the Third Committee, resolution 65/198, entitled "Indigenous issues". In this resolution, the Assembly to expand the mandate of the United Nations Voluntary Fund for Indigenous Populations so that it can assist representatives of indigenous peoples' organizations and communities to participate in sessions of the Human Rights Council and of human rights treaty bodies, based on diverse and renewed participation and in accordance with relevant rules and regulations, including Economic and Social Council resolution 1996/31 of 25 July 1996; and decided to organize a high-level plenary meeting of the General Assembly, to be known as the World Conference on Indigenous Peoples, to be held in 2014, in order to share perspectives and best practices on the realization of the rights of indigenous peoples, including to pursue the objectives of the United Nations Declaration on the Rights of Indigenous Peoples, and invites the President of the General Assembly to conduct open-ended consultations with Member States and with representatives of indigenous peoples in the framework of the Permanent Forum on Indigenous Issues, as well as with the Expert Mechanism on the Rights of Indigenous Peoples and the Special Rapporteur in order to

[315] A/HRC/15/37.

[316] United Nations, *Treaty Series*, vol. 1650, p. 383.

[317] General Assembly resolution 61/295 of 13 September 2007.

determine the modalities for the meeting, including the participation of indigenous peoples in the Conference.

(*l*) Terrorism and human rights[318]

a. Human Rights Council

The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Mr. Martin Scheinin, submitted his annual report to the Human Rights Council on 22 December 2010.[319] In addition to a description of the activities of the Special Rapporteur, the report includes a compilation of ten areas of best practice in countering terrorism: (a) consistency of counter-terrorism law with human rights, humanitarian law and refugee law; (b) consistency of counter-terrorism practice with human rights, humanitarian law and refugee law; (c) normal operation and regular review of counter-terrorism law and practice; (d) effective remedies for violations of human rights; (e) victims of terrorism; (f) definition of terrorism; (g) offence of incitement to terrorism; (h) listing of terrorist entities; and (i) arrest and interrogation of terrorism suspects. The concept of "best practice" refers to legal and institutional frameworks that serve to promote and protect human rights, fundamental freedoms and the rule of law in all aspects of counter-terrorism. In the compilation, the Special Rapporteur sought primarily to identify legislative models that he considered appropriate for the effective countering of terrorism in full compliance with human rights.

On 26 March 2010, the Human Rights Council adopted resolution 13/26 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 measure taken to counter terrorism complies with international law, in particular international human rights, refugee and humanitarian law. The Council also called upon States, while countering terrorism, to ensure that any person whose human rights or fundamental freedoms had been violated had access to an effective remedy and that victims would receive adequate, effective and prompt reparations where appropriate, including by bringing to justice those responsible for such violations. Moreover, the Council called upon States, while countering terrorism, to safeguard the right to privacy in accordance with international law, and urged them to take measures to ensure that interferences with the right to privacy were regulated by law, subject to effective oversight and appropriate redress, including through judicial review or other means.

On 30 September 2010, the Human Rights Council adopted resolution 15/15 entitled "Protection of human rights and fundamental freedoms while countering terrorism: mandate of the Special Rapporteur on the promotion and protection of human rights while countering terrorism". In the resolution, the Council, *inter alia*, decided to extend the mandate of the Special Rapporteur on the promotion and protection of human rights while countering terrorism for a period of three years.

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[318] For further information on terrorism, see sections 2 (*g*) and 16 (*k*) of this chapter.

[319] A/HRC/16/51.

b. General Assembly

The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Mr. Martin Scheinin, submitted his annual report to the General Assembly in August 2010.[320] The report addresses the question of compliance with human rights by the United Nations when countering terrorism and takes stock of and assesses the role and contributions of, *inter alia*, the Assembly, the Counter-Terrorism Implementation Task Force, the Human Rights Council, the Security Council and its subsidiary bodies, and United Nations field presences in the promotion and protection of human rights in the context of their counter-terrorism activities. The Special Rapporteur's main recommendation was that the Security Council should seize the opportunity of the approaching tenth anniversary of its resolution 1373 (2001) to replace resolutions 1373 (2001), 1624 (2005) and 1267 (1999) (as amended) with a single resolution, not adopted under Chapter VII of the Charter of the United Nations, in order to systematize the States' counter-terrorism measures and reporting duties of States under one framework. This proposal was motivated by the assessment of the Special Rapporteur that Chapter VII does not provide the proper legal basis for maintaining the current framework of mandatory and permanent Security Council resolutions of a quasi-legislative or quasi-judicial nature. The report also addresses ways and means of improving the human rights accountability of the United Nations for its field operations, in the context of countering terrorism.

On 21 December 2010, the General Assembly adopted, on the recommendation of the Third Committee, resolution 65/221 entitled "Protection of human rights and fundamental freedoms while countering terrorism".[321] In this resolution, the Assembly, *inter alia*, reaffirmed that States must ensure that any measure taken to combat terrorism complies with their obligations under international law, in particular international human rights, refugee and humanitarian law; and that counter-terrorism measures should be implemented in accordance with international law, including international human rights, refugee and humanitarian law, thereby taking into full consideration the human rights of all.

(*m*) Promotion and protection of human rights

(i) *International cooperation and universal instruments*

a. Human Rights Council

On 26 March 2010, the Human Rights Council adopted resolution 13/23 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 also the primary responsibility of Member States to promote, protect and encourage respect for human rights and fundamental freedoms through, *inter alia*, international cooperation. The Council reaffirmed that the promotion, protection and full realization of all human rights and fundamental freedoms should be guided by the principles of uni-

[320] A/65/258.

[321] A/RES/65/221.

versality, non-selectivity, objectivity and transparency, in a manner consistent with the purposes and principles set out in the Charter.

b. General Assembly

On 21 December 2010, the General Assembly adopted, on the recommendation of the Third Committee, resolution 65/218 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 through, *inter alia*, international cooperation; and urged all actors on the international scene to build an international order based on inclusion, justice, equality and equity, human dignity, mutual understanding and promotion of and respect for cultural diversity and universal human rights, and to reject all doctrines of exclusion based on racism, racial discrimination, xenophobia and related intolerance.

(ii) *Ombudsman, mediator and other national human rights institutions in the promotion and protection of human rights*

General Assembly

On 21 December 2010, the General Assembly adopted, on the recommendation of the Third Committee, resolution 65/207 entitled "The role of the Ombudsman, mediator and other national human rights institutions in the promotion and protection of human rights". In this resolution, the Assembly, *inter alia*, took note with appreciation of the report of the Secretary-General on the role of the Ombudsman, mediator and other national human rights institutions in the promotion and protection of human rights. The Assembly encouraged Member States: to consider the creation or the strengthening of independent and autonomous Ombudsman, mediator and other national human rights institutions; and to develop and conduct, as appropriate, outreach activities at the national level, in collaboration with all relevant stakeholders, in order to raise awareness of the important role of Ombudsman, mediator and other national human rights institutions.

(iii) *The right to the truth*

a. Human Rights Council

On 17 June 2010, the Human Rights Council adopted resolution 14/7 entitled "Proclamation of 24 March as the International Day for the Right to the Truth concerning Gross Human Rights Violations and for the Dignity of Victims". In this resolution, the Council, *inter alia*, recognized the importance of promoting the memory of victims of gross and systematic human rights violations and the importance of the right to truth and justice and recommended that the General Assembly proclaim 24 March the International Day for the Right to Truth concerning Gross Human Rights Violations and for the Dignity of Victims.

b. General Assembly

On 21 December 2010, the General Assembly adopted, on the recommendation of the Third Committee, resolution 65/196 entitled "Proclamation of 24 March as the International Day for the Right to the Truth concerning Gross Human Rights Violations and for the Dignity of Victims". In this resolution, the Assembly, *inter alia*, proclaimed 24 March as the International Day for the Right to the Truth concerning Gross Human Rights Violations and for the Dignity of Victims; and invited all Member States, organizations of the United Nations system and other international organizations and civil society entities, including non-governmental organizations and individuals, to observe the International Day in an appropriate manner.

(*n*) Persons with disabilities

a. Human Rights Council

On 25 March 2010, the Human Rights Council adopted resolution 13/11 entitled "Human rights of persons with disabilities: national implementation and monitoring and introducing as the theme for 2011 the role of international cooperation in support of national efforts for the realization of the rights of persons with disabilities". In this resolution, the Council, *inter alia*, acknowledged that the Convention on the Rights of Persons with Disabilities, 2006[322] is the first human rights instrument to contain specific provisions for national implementation and monitoring, and reaffirmed the provisions to that effect contained in article 33 of the Convention. The Council welcomed the fact that, to that date, one hundred and forty-four States and one regional integration organization had signed and eighty-three ratified the Convention on the Rights of Persons with Disabilities, and that eighty-eight had signed and fifty-two had ratified the 2006 Optional Protocol.[323] The Council encouraged States that have ratified the Convention and have submitted one or more reservations to the Convention to implement a process to review regularly the effect and continued relevance of such reservations, and to consider the possibility of withdrawing them.

b. General Assembly

On 21 December 2010, the General Assembly adopted, on the recommendation of the Third Committee, resolution 65/186 entitled "Realizing the Millennium Goals for persons with a disability towards 2015 and beyond". In this resolution, the Assembly, *inter alia*, affirmed that a role of the Convention on the Rights of Persons with Disabilities, 2006,[324] which is both a human rights treaty and a development tool, is to provide an opportunity to strengthen the policies related to the implementation of the Millennium Development Goals, thereby contributing to the realization of a "society for all" in the twenty-first century. The Assembly noted that the Convention emphasizes the importance of international cooperation for improving the living conditions of persons with disabilities in every country, particularly in developing countries, and that the Convention provides comprehensive coverage for the civil, political, economic, social and cultural rights of persons with disabilities.

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[322] General Assembly resolution 61/106 of 13 December 2006.

[323] *Ibid.*

[324] *Ibid.*

(*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 in June 2010.[325] In her report, the Special Rapporteur focused on the manifestations and causes of domestic servitude and recommended that, *inter alia*, States adopt specific provisions to criminalize the servitude in all its forms and manifestations and put in place effective and accessible information and complaints mechanisms for victims of domestic servitude, domestic workers and other community members.

On 29 September 2010, the Human Rights Council adopted resolution 15/2 entitled "Special Rapporteur on contemporary forms of slavery". In the resolution, the Council, *inter alia*, decided to renew the mandate of the Special Rapporteur for a period of three years. The Council also decided that the Special Rapporteur in the discharge of his/her mandate should, *inter alia*, focus principally on aspects of contemporary forms of slavery which were not covered by existing mandates of the Human Rights Council. Moreover, the Council encouraged the Special Rapporteur to compile and analyse examples of national legislation relating to the prohibition of slavery and slavery-like practices in order to assist States in their national efforts to combat contemporary forms of slavery.

b. General Assembly

On 24 December 2010, the General Assembly adopted, without reference to a Main Committee, resolution 65/239 entitled "Permanent memorial to and remembrance of the victims of slavery and the transatlantic slave trade". In this resolution, the Assembly, *inter alia*, welcomed the initiative of Member States to erect, at a place of prominence at United Nations Headquarters that is easily accessible to delegates, United Nations staff and visitors, a permanent memorial in acknowledgement of the tragedy and in consideration of the legacy of slavery and the transatlantic slave trade. It requested the relevant bodies, including the Secretary-General and United Nations Educational, Scientific and Cultural Organization to take the necessary steps to implement the initiative.

(*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*

a. Human Rights Council

On 17 June 2010, the Human Rights Council adopted resolution 14/4 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*, stressed that the purpose of the United Nations is to achieve international cooperation in solving international problems of an economic, social, cultural or humanitarian character. The Council also recalled the proposed ele-

[325] A/HRC/15/20.

ments for a conceptual framework for understanding the relationship between foreign debt and human rights, and urged the international community, including the United Nations, the Bretton Woods institutions and the private sector, to take appropriate measures and actions for the implementation of the pledges, commitments, agreements and decisions of the major United Nations conferences and summits.

(ii) *Human rights and unilateral coercive measures*

a. General Assembly

On 21 December 2010, the General Assembly adopted, on the recommendation of the Third Committee, resolution 65/217 entitled "Human rights and unilateral coercive measures". In this resolution, the Assembly, *inter alia*, while expressing concern about the negative impact of unilateral coercive measures on international relations, trade, investment and cooperation, urged all 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 those of a coercive nature with all their extraterritorial effects, which create obstacles to trade relations among States, thus impeding the full realization of the rights set forth in the Universal Declaration of Human Rights and other international human rights instruments, in particular the right of individuals and peoples to development. The Assembly also urged all States not to adopt any unilateral measures not in accordance with international law and the Charter of the United Nations that impede the full achievement of economic and social development by the population of the affected countries.

(iii) *Human rights and climate change*

General Assembly

On 20 December 2010, the General Assembly adopted, on the recommendation of the Second Committee, resolution 65/159 entitled "Protection of global climate for present and future generations of humankind". In this resolution, the Assembly, *inter alia*, stressed the urgency of addressing, and the seriousness of, the challenge of climate change, and called upon States to show strong political will in working cooperatively towards achieving the ultimate objective of the United Nations Framework Convention on Climate Change,[326] through the urgent implementation of its provisions.

[326] United Nations, *Treaty Series*, vol. 1771, p. 107.

6. Women[327] [328]

(*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-fourth session in New York on 13 March and 14 October 2009 and from 1 to 12 March 2010. In accordance with the multi-year programme of work adopted by the Economic and Social Council,[329] the Commission was mandated to review the implementation of the Beijing Declaration[330] and the Platform for Action,[331] the outcomes of the twenty-third special session of the General Assembly[332] and its contribution to shaping a gender perspective towards the full realization of the Millennium Development Goals.[333]

During its fifty-fourth session, the Commission adopted seven resolutions to be brought to the attention of the Economic and Social Council.[334] In resolution 54/1, the Commission adopted the "Declaration on the occasion of the fifteenth anniversary of the Fourth World Conference on Women"[335] which it decided to submit to the Economic and Social Council for transmission to the General Assembly for its endorsement.

In resolution 54/4 regarding "Women's economic empowerment", the Commission, *inter alia*, urged States to adopt and implement legislation, policies and/or programmes

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[327] See also section 5 of this chapter on human rights.

[328] For a complete list of signatories and States Parties to international instruments relating to women that are deposited with the Secretary-General, see chapters relating to human rights and the status of women, in *Multilateral Treaties Deposited with the Secretary-General,* available at http://treaties.un.org/Pages/ParticipationStatus.aspx.

[329] Economic and Social Council resolution 2009/15 of 28 July 2009.

[330] *Report of the Fourth World Conference on Women*, *Beijing, 4–15 September 1995* (United Nations Publication, Sales No. E.95.IV.13), chapter 1, resolution 1, annex I.

[331] *Ibid*., annex II.

[332] The twenty-third special session of the General Assembly on "Women 2000: Gender Equality, Development and Peace for the Twenty-First Century" took place from 5 to 9 June 2000.

[333] For the report of the Commission on the Status of Women on its fifty-fourth session, see *Official Records of the Economic and Social Council, 2010 Supplement No. 7*, E/2010/27-E/CN.6/2010/11.

[334] Resolution 54/1 entitled "Declaration on the occasion of the fifteenth anniversary of the Fourth World Conference on Women"; resolution 54/2 entitled "Women, the girl child and HIV and AIDS; resolution 54/3 entitled "Release of women and children taken hostage, including those subsequently imprisoned, in armed conflicts"; resolution 54/4 entitled "Women's economic empowerment"; resolution 54/5 entitled "Eliminating maternal mortality and morbidity through the empowerment of women"; resolution 54/6 entitled "Strengthening the institutional arrangements of the United Nations for support of gender equality and the empowerment of women by consolidating the four existing offices into a composite entity"; and resolution 54/7 entitled "Ending female genital mutilation".

[335] For the text of the Declaration, see *Official Records of the Economic and Social Council, 2010 Supplement No. 7*, E/2010/27-E/CN.6/2010/11.

aimed at eliminating the constraints faced by women in accessing formal financial services and that support savings, credit and lending mechanisms for women.

In resolution 54/7 concerning "Ending female genital mutilation", the Commission urged States to provide education and training on the rights of women and girls to, *inter alia*, police officers, legal and judicial personnel and prosecutors, in order to increase awareness and commitment to the promotion and protection of the rights of women and girls and appropriate responses to rights violations with regard to female genital mutilation. The Commission also urged States to review and revise, amend or abolish all laws, regulations, policies, practices and customs, in particular female genital mutilation, that discriminate against women and girls and have a discriminatory impact on women and girls and to ensure that provisions of multiple legal systems, where they exist, comply with international human rights obligations, commitments and principles.

(*b*) General Assembly

On 21 December 2010, the General Assembly, on the recommendation of the Third Committee, adopted resolution 65/187 entitled "Intensification of efforts to eliminate all forms of violence against women". In this resolution, the Assembly, *inter alia*, reaffirmed that discrimination on the basis of sex is contrary to the Charter of the United Nations, the Convention on the Elimination of All Forms of Discrimination against Women,[336] the Convention on the Rights of the Child[337] and other international human rights instruments, and that its elimination is an integral part of efforts towards the elimination of all forms of violence against women. The Assembly recalled the inclusion of gender-related crimes and crimes of sexual violence in the Rome Statute of the International Criminal Court,[338] as well as the recognition by the *ad hoc* international criminal tribunals that rape and other forms of sexual violence can constitute a war crime, a crime against humanity or a constitutive act with respect to genocide or torture. The Assembly welcomed the establishment of the United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women), the adoption of the United Nations Global Plan of Action to Combat Trafficking in Persons,[339] and stressed its contribution to combating violence against women and the need for its full and effective implementation. The Assembly emphasized that the lack of full and effective enforcement of national legal frameworks to prevent and address violence against women remains a continuing challenge, as noted by the Secretary-General in his report.[340] Moreover, the Assembly stressed that "violence against women" means any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life. The Assembly strongly condemned all acts of violence against women and girls, whether those acts are perpetrated by the State, by private persons or by non-State actors, and called for the elimination of all forms of gender-based violence in the family, within the general

[336] United Nations, *Treaty Series*, vol. 1249, p. 13.

[337] United Nations, *Treaty Series*, vol. 1577, p. 3.

[338] United Nations, *Treaty Series*, vol. 2187, p. 3.

[339] General Assembly resolution 64/293 of 30 July 2010.

[340] A/65/208.

community and where perpetrated or condoned by the State. The Assembly also stressed that States have the obligation, at all levels, to promote and protect all human rights and fundamental freedoms for all, including women and girls, and must exercise due diligence to prevent, investigate, prosecute and punish the perpetrators of violence against women and girls, to eliminate impunity and to provide protection to the victims, and that failure to do so violates and impairs or nullifies the enjoyment of their human rights and fundamental freedoms. The Assembly stressed the need for the exclusion of the killing and maiming of women and girls, as prohibited under international law, and crimes of sexual violence from amnesty provisions in the context of conflict resolution processes and that States should take all possible measures to empower women, inform them of their rights in seeking redress through mechanisms of justice and inform everyone of women's rights and of the existing penalties for violating those rights. The Assembly urged, *inter alia*, States to review and, where appropriate, revise, amend or abolish all laws, regulations, policies, practices and customs that discriminate against women or have a discriminatory impact on women, and ensure that the provisions of multiple legal systems, where they exist, comply with international human rights obligations, commitments and principles, including the principle of non-discrimination. The Assembly also urged States to treat all forms of violence against women and girls as a criminal offence, punishable by law, contributing, *inter alia*, to the prevention of such crimes, and ensure that penalties commensurate with the severity of the crimes and sanctions in domestic legislation to punish, and redress, as appropriate, the wrongs caused to women and girls who are subjected to violence. The Assembly furthermore urged States to take effective measures to prevent the victim's consent from becoming an impediment to bringing perpetrators of violence against women and girls to justice, and encouraged the removal of all barriers to women's access to justice. States were also urged to ensure that effective legal assistance is provided to all female victims of violence so that they can make informed decisions regarding, *inter alia*, legal proceedings and issues relating to family law, and that victims have access to just and effective remedies for the harm that they have suffered, including through the adoption of national legislation where necessary. The Assembly also stressed the contribution of the *ad hoc* international criminal tribunals and the International Criminal Court to ending impunity, by ensuring accountability and punishing perpetrators of violence against women, and urged States to consider ratifying or acceding as a matter of priority to the Rome Statute of the International Criminal Court.[341]

On the same day, the General Assembly adopted, on the recommendation of the Third Committee, resolution 65/191 entitled "Follow-up to the Fourth World Conference on Women and full implementation of the Beijing Declaration and Platform for Action and the outcome of the twenty-third special session of the General Assembly". In this resolution, the General Assembly, *inter alia*, reaffirmed the Beijing Declaration and Platform for Action adopted at the Fourth World Conference on Women[342] and the outcome of the twenty-third special session of the General Assembly,[343] and recognized that the implementation of the Beijing Declaration and Platform for Action and the fulfilment of

[341] United Nations, *Treaty Series*, vol. 2187, p. 3.

[342] *Report of the Fourth World Conference on Women, Beijing, 4–15 September 1995* (United Nations publication, Sales No. E.96.IV.13), chap. I, resolution 1, annexes I and II.

[343] Resolution S-23/2, annex, and resolution S-23/3, annex.

the obligations of States Parties under the Convention on the Elimination of All Forms of Discrimination against Women[344] are mutually reinforcing in respect of achieving gender equality and the empowerment of women.

7. Humanitarian matters

(*a*) Economic and Social Council

On 15 July 2010, the Economic and Social Council adopted resolution 2010/1 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.[345] The Council welcomed initiatives undertaken at the regional and national levels in relation to the implementation of the Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance adopted at the Thirtieth International Conference of the Red Cross and Red Crescent and encouraged Member States and relevant regional organizations to strengthen operational and legal frameworks for international disaster relief. The Council 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. Furthermore, the Council urged Member States to ensure that perpetrators of crimes committed on their territory or on other territories under their effective control against humanitarian personnel did not operate with impunity and were brought to justice as provided for by national laws and obligations under international law.

(*b*) General Assembly

On 15 December 2010, the General Assembly, without reference to a Main Committee, adopted resolution 65/132 entitled "Safety and security of humanitarian personnel and protection of United Nations personnel". In this resolution, the Assembly, *inter alia*, recalled all relevant provisions of international law, including international humanitarian law and human rights law, as well as all relevant treaties,[346] and that the primary responsibility under international law for the security and protection of humanitarian

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[344] United Nations, *Treaty Series*, vol. 1249, p. 13.

[345] A/65/82-E/2010/88.

[346] These include, notably, the Convention on the Privileges and Immunities of the United Nations, 1946 (United Nations, *Treaty Series* , vol. 1, p. 15, and vol. 90, p. 327 (corrigendum to vol. 1)), the Convention on the Privileges and Immunities of the Specialized Agencies, 1947 (United Nations, *Treaty Series* , vol. 33, p. 261), the Convention on the Safety of United Nations and Associated Personnel, 1994 (United Nations, *Treaty Series*, vol. 2051, p. 363), the Optional Protocol to the Convention on the Safety of United Nations and Associated Personnel, 2005 (A/60/518), the Geneva Convention relative to the Protection of Civilian Persons in Time of War, 1949 (United Nations, *Treaty Series* , vol. 75, p. 287) and the Additional Protocols to the Geneva Conventions, 1977 (United Nations, *Treaty Series* , vol. 1125, p. 3, and p. 609), and Amended Protocol II of 3 May 1996 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, 1980 (United Nations, *Treaty Series*, vol. 2048, p. 93).

personnel and United Nations and associated personnel lies with the Government hosting a United Nations operation conducted under the Charter of the United Nations or its agreements with relevant organizations. The Assembly welcomed the report of the Secretary-General,[347] and urged all States to make every effort to ensure the full and effective implementation of the relevant principles and rules of international law, including international humanitarian law, human rights law and refugee law related to the safety and security of humanitarian personnel and United Nations personnel. The Assembly called upon all States to consider becoming parties to the Rome Statute of the International Criminal Court 1998,[348] to the Optional Protocol to the Convention on the Safety of United Nations and Associated Personnel 2005,[349] and also urged States Parties to put in place appropriate national legislation, as necessary, to enable its effective implementation. The Assembly also called upon all States, all parties involved in armed conflict and all humanitarian actors to respect the principles of neutrality, humanity, impartiality and independence for the provision of humanitarian assistance and called upon all States to comply fully with their obligations under international humanitarian law, including as provided by the Geneva Convention relative to the Protection of Civilian Persons in Time of War, 1949,[350] in order to respect and protect civilians, including humanitarian personnel, in territories subject to their jurisdiction. The Assembly requested the Secretary-General to take the necessary measures to promote full respect for the human rights, privileges and immunities of United Nations and other personnel carrying out activities in fulfilment of the mandate of United Nations operation, and also requested the Secretary-General to seek the inclusion, in negotiations of headquarters and other mission agreements concerning United Nations and associated personnel, of the applicable conditions contained in the Convention on the Privileges and Immunities of the United Nations, 1946,[351] the Convention on the Privileges and Immunities of the Specialized Agencies, 1947[352] and the Convention on the Safety of United Nations and Associated Personnel, 2005.[353] The Assembly also noted with appreciation the progress reported in implementing the recommendations of the Independent Panel on Safety and Security of United Nations Personnel and Premises Worldwide, including on accountability.[354]

On the same day, the General Assembly adopted resolution 65/133 entitled "Strengthening of the coordination of emergency humanitarian assistance of the United Nations". In this resolution, the Assembly, *inter alia*, recognized the high numbers of persons affected by humanitarian emergencies, including internally displaced persons, and welcomed in this regard the adoption and ongoing ratification process of the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa, 2009.[355] The Assembly also welcomed the outcome of the thirteenth humanitarian affairs segment

[347] A/65/344 and Corr.1.

[348] United Nations, *Treaty Series*, vol. 2187, p. 3.

[349] A/60/518.

[350] United Nations, *Treaty Series*, vol. 75, p. 287.

[351] *Ibid.*, vol. 1, p. 15, and vol. 90, p. 327 (corrigendum to vol. 1).

[352] *Ibid.*, vol. 33, p. 261.

[353] *Ibid.*, vol. 2051, p. 363.

[354] Available at www.un.org/News/dh/infocus/terrorism/PanelOnSafetyReport.pdf.

[355] Available at www.africa-union.org.

of the Economic and Social Council at its substantive session of 2010.[356] The Assembly reaffirmed the importance of implementing the Hyogo Framework for Action 2005–2015: Building the Resilience of Nations and Communities to Disasters,[357] and looked forward to the midterm review of the Hyogo Framework for Action, the third session of the Global Platform for Disaster Risk Reduction, to be held in Geneva from 8 to 13 May 2011, and the 2011 Global Assessment Report on Disaster Risk Reduction. Furthermore, the Assembly welcomed the initiatives at the regional and national levels related to the implementation of the Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance,[358] adopted at the Thirtieth International Conference of the Red Cross and Red Crescent, held in Geneva from 26 to 30 November 2007, and encouraged Member States and, where applicable, regional organizations, to take further steps to strengthen operational and legal frameworks for international disaster relief, taking into account the Guidelines, as appropriate. The Assembly also recognized the Guiding Principles on Internal Displacement[359] as an important international framework for the protection of internally displaced persons, encouraged Member States and humanitarian agencies to continue to work together, in collaboration with host communities, in endeavours to provide a more predictable response to the needs of internally displaced persons, and in this regard called for continued and enhanced international support, upon request, for capacity-building efforts of States.

On 15 December 2010, the General Assembly also adopted resolution 65/135 entitled "Humanitarian assistance, emergency relief, rehabilitation, recovery and reconstruction in response to the humanitarian emergency in Haiti, including the devastating effects of the earthquake". In this resolution, the Assembly, *inter alia*, welcomed the establishment of the Interim Haiti Recovery Commission and the Haiti Reconstruction Fund, which play a significant role in the reconstruction efforts in Haiti, and reiterated the need for the United Nations system to ensure that the humanitarian, early recovery and reconstruction assistance provided is timely, adequate, effective and coherent and coordinated among all humanitarian and development actors, in coordination with and in support of the Government of Haiti, and in accordance with the principles of humanity, neutrality, impartiality and independence. The Assembly also welcomed the report of the Secretary-General entitled "Humanitarian assistance and rehabilitation for selected countries and regions" submitted pursuant to resolution 64/250.[360]

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[356] See A/65/3, chap. VI. For the final text, see *Official Records of the General Assembly, Sixty-fifth Session, Supplement No. 3*.

[357] A/CONF.206 and Corr.1, chap. I, resolution 2.

[358] Available at www.ifrc.org.

[359] E/CN.4/1998/53/Add.2, annex.

[360] A/65/335.

8. Environment

(*a*) Economic and Social Council

By resolution 2010/32 of 23 July 2010, entitled "Consolidated List of Products Whose Consumption and/or Sale Have Been Banned, Withdrawn, Severely Restricted or Not Approved by Governments", the Economic and Social Council took note of the note by the Secretary-General transmitting the report of the United Nations Environment Programme on the chemicals volume of the Consolidated List of Products Whose Consumption and/or Sale Have Been Banned, Withdrawn, Severely Restricted or Not Approved by Governments[361] and the report of the World Health Organization on the pharmaceuticals volume of the Consolidated List.[362] The Council further decided to discontinue consideration of the Consolidated List at its future substantive sessions.

(*b*) General Assembly

On 20 December 2010, the General Assembly adopted, on recommendation of the Second Committee, 17 resolutions related to the environment, six of which are highlighted below.[363]

By resolution 65/150 entitled "Protection of coral reefs for sustainable livelihoods and development", the General Assembly urged States to take all practical steps at all levels to protect coral reefs and related ecosystems for sustainable livelihoods and development; to address the adverse impact of climate change, including through mitigation and adaptation, as well as of ocean acidification, on coral reefs and related ecosystems; and to formulate, adopt and implement integrated and comprehensive approaches for the management of coral reefs and related ecosystems under their jurisdiction. The Assembly requested the Secretary-General to submit a report on the importance of protecting coral reefs and related ecosystems for sustainable livelihoods and development, for consideration by the General Assembly at its sixty-sixth session and for the information of other forums; and to identify potential actions consistent with international law needed to protect coral reefs and related ecosystems.

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[361] E/2010/79.

[362] E/2010/84.

[363] Other resolutions related to the environment, adopted on 20 December 2010 by the General Assembly, are resolution 65/147 entitled "Oil slick on Lebanese shores"; resolution 65/149 entitled "Cooperative measures to assess and increase awareness of environmental effects related to waste originating from chemical munitions dumped at sea"; resolution 65/152 entitled "Implementation of Agenda 21, the Programme for the Further Implementation of Agenda 21 and the outcomes of the World Summit on Sustainable Development"; resolution 65/153 entitled "Follow-up of the International Year of Sanitation, 2008"; resolution 65/156 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"; resolution 65/158 entitled "International cooperation to reduce the impact of the El Niño phenomenon"; resolution 65/159 entitled "Protection of global climate for present and future generations of humankind"; resolution 65/162 entitled "Report of the Governing Council of the United Nations Environment Programme on its eleventh special session"; resolution 65/163 entitled "United Nations Decade of Education for Sustainable Development (2005–2014)"; resolution 65/164 entitled "Harmony with Nature"; and resolution 65/173 entitled "Promotion of ecotourism for poverty eradication and environment protection".

By resolution 65/151 entitled "International Year for Sustainable Energy for All", the General Assembly decided to declare 2012 the International Year of Sustainable Energy for All and requested the Secretary-General to organize and coordinate activities to be undertaken during the Year.

By resolution 65/154 entitled "International Year of Water Cooperation, 2013", the General Assembly decided to declare 2013 the International Year of Water Cooperation and invited the Secretary-General to organize activities of the Year and to support Member States in the implementation of the Year.

By resolution 65/155 entitled "Towards the sustainable development of the Caribbean Sea for present and future generations", the General Assembly recognized that the Caribbean Sea is an area of unique biodiversity and a highly fragile ecosystem that requires relevant regional and international development partners to work together to develop and implement regional initiatives to promote the sustainable conservation and management of coastal and marine resources, including the consideration of the concept of the Caribbean Sea as a special area in the context of sustainable development, including its designation as such without prejudice to relevant international law. The Assembly called upon the United Nations system and the international community to assist, as appropriate, Caribbean countries and their regional organizations in their efforts to ensure the protection of the Caribbean Sea from degradation as a result of pollution from ships, as well as pollution from land-based activities.

By resolution 65/160 entitled "Implementation of the United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa", the General Assembly decided to convene a one day high-level meeting on the theme "Addressing desertification, land degradation and drought in the context of sustainable development and poverty eradication", to be held on Monday, 19 September 2011, prior to the general debate of the sixty-sixth session of the General Assembly. It further decided that the meeting will be structured around an opening plenary meeting followed by one interactive panel in the morning, on the same theme as the high-level meeting, followed by an interactive panel in the afternoon and a closing plenary; that the panels will be co-chaired by Heads of State or Government, with due regard to geographical balance, in consultation with regional groups; that the meeting will be held at the highest possible political level, with the participation of Heads of State or Government, ministers, special representatives and other representatives, as appropriate; that the preparations for the meeting will be undertaken under the aegis of the President of the sixty-fifth session of the General Assembly; and requested the Secretary-General to prepare a background paper for the high-level meeting, in consultation with Member States, to be available no later than June 2011.

By resolution 65/161 entitled "Convention on Biological Diversity", the General Assembly decided to declare 2011–2020 the United Nations Decade of Biodiversity with a view to contributing to the implementation of the Strategic Plan on Biodiversity for the Period 2011–2020, and to designate the Executive Secretary of the Convention on Biological Diversity as the focal point for the coordination of the activities of the Decade, in consultation with Member States.

The General Assembly adopted several resolutions related to environmental issues not on recommendation of the Second Committee. On 28 July 2010, the General Assembly,

without reference to a Main Committee, adopted resolution 64/292 entitled "The human right to water and sanitation". On 6 December 2010, the General Assembly adopted, on recommendation of the Sixth Committee, resolution 65/28 entitled "Consideration of prevention of transboundary harm from hazardous activities and allocation of loss in the case of such harm". On 8 December 2010, the General Assembly, on recommendation of the First Committee, adopted resolution 65/53 entitled "Observance of environmental norms in the drafting and implementation of agreements on disarmament and arms control".

9. Law of the sea

(*a*) Reports of the Secretary-General

The Secretary-General submitted a comprehensive report on oceans and the law of the sea[364] to the General Assembly at its sixty-fifth session under the agenda item entitled "Oceans and the law of the sea". The report, which was also submitted to States Parties to the United Nations Convention on the Law of the Sea, 1982 (the "Convention"),[365] pursuant to article 319 of the Convention, consisted of three parts. The first part of the report[366] examined the relevance and scope of capacity-building, presented an overview of the capacity building needs of States in marine science and other areas of ocean affairs and the law of the sea and reviewed current capacity-building activities and initiatives in those areas. This part of the report also addressed the challenges in implementing capacity-building activities and initiatives, and identified opportunities for ways to move forward. The second part of the report[367] presented the views received from States on the fundamental building blocks of the Regular Process for Global Reporting and Assessment of the State of the Marine Environment, including Socio-economic Aspects. The third part of the report[368] provided an overview of developments relating to the implementation of 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 2010. The 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.[369]

The report also outlined the work carried out in 2010 by the three bodies established by the Convention, namely the International Seabed Authority (ISA), the International

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[364] A/65/69, A/65/69/Add.1, A/65/69/Add.2. At the time of preparation of this chapter, the Secretary-General report to the sixty-sixth session of the General Assembly was not published yet. It will contain further details on activities carried out in 2010. Therefore, for activities that have taken place in 2010 after the publication of A/65/69/Add.2 references have been made to available United Nations documents other than the report of the Secretary-General.

[365] United Nations, *Treaty Series*, vol. 1833, p. 3.

[366] A/65/69.

[367] A/65/69/Add.1.

[368] A/65/69/Add.2.

[369] *Ibid*., chapter III.

Tribunal for the Law of the Sea (ITLOS)[370] and the Commission on the Limits of the Continental Shelf (CLCS).

The ISA held its sixteenth session,[371] during which the Council continued its discussion on the draft regulations on prospecting and exploration for polymetallic sulphides in the international seabed area beyond the limits of national jurisdiction, focusing, in particular, on an annex that sets out procedures to be followed to avoid, report on and resolve overlapping claims. After agreeing to a number of revisions, the Council adopted the Regulations on 6 May 2010 and recommended their adoption by the Assembly, which took place on 7 May 2010.[372] Following a decision adopted by the Council during the sixteenth session, on 14 May 2010 the Secretariat of the Authority submitted a request to the Seabed Disputes Chamber of ITLOS for an advisory opinion, pursuant to article 191 of the Convention, on the responsibility and liability of sponsoring States for activities in the Area. The request for an advisory opinion had been originally proposed by the Government of Nauru.[373]

The CLCS held its twenty-fifth and twenty-sixth sessions,[374] during which it examined five submissions made by Barbados; the United Kingdom in respect of Ascension Island; Indonesia in respect of North West of Sumatra Island; Japan; and Mauritius and Seychelles in respect of the Mascarene Plateau and Suriname.

At the twenty-fifth session, the CLCS heard formal presentations of submissions made by France in respect of the French Antilles and the Kerguelen Islands; Norway in respect of Bouvetøya and Dronning Maud Land, Federated States of Micronesia; Papua New Guinea and Solomon Islands in respect of the Ontong Java Plateau; Portugal; the United Kingdom "in respect of the Falkland Islands and of South Georgia and the South Sandwich Islands";[375] [376] Tonga; Spain in respect of the area of Galicia; Trinidad and Tobago; Namibia; and Cuba. The CLCS adopted its recommendations in regard to the submission made by Barbados and by the United Kingdom in respect of Ascension Island.[377]

At the twenty-sixth session, the CLCS heard formal presentations of submissions made by Yemen; South Africa, in respect of the mainland of the territory of the Republic

[370] For the work of the Tribunal during 2010 see chapter VII of this publication.

[371] The sixteenth session was held from 26 April to 7 May 2010.

[372] The Regulations on Prospecting and Exploration for Polymetallic Nodules in the Area were adopted by the Authority on 13 July 2000. The draft regulations on prospecting and exploration for cobalt-rich ferromanganese crusts in the Area will be taken up at the seventeenth session in 2011.

[373] For more information on the sixteenth session of ISA see A/65/69/Add.2, chapter IV, section A, as well as ISBA/16/A/12 and ISBA/16/C/14.

[374] For more information on the twenty-fifth (15 March-23 April 2010) and twenty-sixth (2 August-3 September 2010) sessions of the CLCS see A/65/69/Add.2, chapter III, section C, as well as CLCS/66 and CLCS/68.

[375] 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.

[376] 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).

[377] Information on all recommendations, including a summary thereof, is available at www.un.org/Depts/los/clcs_new/commission_recommendations.htm.

of South Africa; France and South Africa, in respect of the Crozet Archipelago and the Prince Edward Islands; Palau; and India.

In 2010, Mexico, in respect of the Western Polygon in the Gulf of Mexico, and Ireland, in respect of the area abutting the Porcupine Abyssal Plain, completed the process of establishment of the outer limits of their continental shelves. They deposited with the Secretary-General charts and relevant information, including geodetic data permanently describing the outer limits of the continental shelf, in accordance with article 76, paragraph 9, of the Convention.[378]

The CLCS received three new submissions from Mozambique, Maldives and Denmark, in respect of the Faroe-Rockall Plateau Region. In addition, Nicaragua submitted its preliminary information indicative of the outer limits of the continental shelf beyond 200 nautical miles.

In 2010, the workload of the CLCS continued to be a central issue. Pursuant to a request by the nineteenth Meeting of States Parties,[379] the Secretariat prepared a Note, entitled "Issues related to the workload of the Commission on the Limits of the Continental Shelf",[380] to facilitate a comprehensive review by States Parties of the issue of the workload of the CLCS. The Bureau of the nineteenth Meeting facilitated an informal working group to continue consideration of this issue. The Coordinator of the Informal Working Group reported on its progress to the Meeting and introduced document SPLOS/212, entitled "Possible elements for inclusion in the draft decision of the twentieth Meeting of States Parties on the workload of the Commission on the Limits of the Continental Shelf". Following deliberations on the matter, an open-ended working group was established. The Meeting adopted a decision regarding the workload of the CLCS,[381] requesting the latter to consider adopting a range of measures, as appropriate, on an urgent and priority basis, until the twenty-second Meeting of States Parties, within existing resources.[382] The Meeting also decided to continue to address through the Informal Working Group the issue of the workload of the Commission, in particular to assess further measures that may be necessary, including, inter alia, the possibility of a full-time Commission. The Meeting requested the Informal Working Group to report on its recommendations to the twenty-first Meeting of States Parties in 2011.

At its twenty-sixth session, the CLCS reviewed the decision of the twentieth Meeting of States Parties. It noted that the measures proposed by the Meeting had already been largely applied by the Commission. The CLCS highlighted that working on a full-time

[378] Information concerning the establishment of the outer limits of the continental shelf is available at www.un.org/Depts/los/LEGISLATIONANDTREATIES/index.htm.

[379] See SPLOS/203, para. 95.

[380] SPLOS/208. Parts II and III of this document outlined the existing working arrangements of the Commission and its secretariat, as well as the measures they have already taken to address the workload of the Commission. Part IV described the increased workload of the Commission under the existing working arrangements. Part V provided an overview of measures to further address the increased workload of the Commission. Part VI outlined financing options to implement such measures. Part VII offered considerations on the measures proposed, based on the experience of the Secretariat in servicing the Commission.

[381] SPLOS/216.

[382] See SPLOS/216, para. 1.

basis at United Nations Headquarters represented the most efficient and effective measure for the Commission to address its growing workload.[383] Following the twentieth Meeting of States Parties, the Informal Working Group held two additional meetings in 2010.

The Secretary-General's report also provided an overview with regard to a number of other ocean issues, including international shipping activities;[384] people at sea;[385] maritime security;[386] marine science and technology;[387] conservation and management of marine living resources;[388] marine biological diversity;[389] protection and preservation of the marine environment and sustainable development;[390] climate change and oceans;[391] settlement of disputes relating to law of the sea matters by ITLOS and the International Court of Justice, international cooperation and coordination,[392] including consideration of a course of action on the regular process for global reporting and assessment of the state of the marine environment, including socio-economic following the end of the "assessment of assessments"[393] phase launched by General Assembly resolution 60/30 of 29 November 2005 as the preparatory stage towards the establishment of the Regular Process; 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").[394]

The Security Council and the General Assembly continued to consider acts of piracy and armed robbery at sea off the coast of Somalia, and adopted a number of resolutions for the repression of such acts. The International Maritime Organization (IMO) and a number of United Nations entities, including the United Nations Office on Drugs and Crime (UNODC), implemented specific measures in that regard.

Furthermore, the Secretary-General provided in his report an overview of legal developments relating to piracy and armed robbery against ships worldwide as well as actions being taken by various actors to combat these crimes.[395] Particular attention was given to piracy and armed robbery off the coast of Somalia, which continued to pose a serious threat to the lives and livelihoods of seafarers, the safety and security of international navigation and the security situation in the Horn of Africa. The report, *inter alia,* noted the increase

[383] See A/65/69/Add.2, para. 36.

[384] *Ibid.*, chapter V; see also section 4 of chapter IIIB of the present publication, concerning the activities of the International Maritime Organization.

[385] See A/65/69/Add.2, chapter VI; see also section 12 of this chapter concerning the activities of the United Nations High Commissioner for Refugees, and section 4 of Chapter IIIB of the present publication, concerning the activities of the International Maritime Organization.

[386] *Ibid.*, chapter VII.

[387] *Ibid.*, chapter VIII.

[388] *Ibid.*, chapter IX.

[389] *Ibid.*, chapter X.

[390] *Ibid.*, chapter XI.

[391] *Ibid.*, chapter XII.

[392] *Ibid.*, chapter XIV.

[393] *Ibid.*, chapter XIV.B.

[394] *Ibid.*, chapter XV.

[395] *Ibid.*

in attacks perpetrated at greater than ever distances from the coast of Somalia, including in the Arabian Sea. The increase of piracy incidents in Asia was also noted in the report.[396]

Pursuant to a request from the Security Council in resolution 1918 (2010) of 27 April 2010, the Secretary-General prepared a report on possible options to advance the aim of prosecuting and imprisoning those responsible for acts of piracy and armed robbery at sea off the coast of Somalia.[397] On 25 July 2010, the Secretary-General appointed Jack Lang (France) as his Special Adviser on Legal Issues related to Piracy and Armed Robbery off the Coast of Somalia.[398] Within the regional context, a Project Implementation Unit was established by IMO to facilitate the full and effective implementation of 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.[399] Also with regard to the situation off the coast of Somalia, the IMO and the UNODC, through its Counter-Piracy programme, increased their support and capacity-building for law enforcement authorities to States of the region, including Somalia, to enable them to undertake piracy prosecutions to ensure that the trials of suspects were effective, efficient and fair.[400]

In relation to the Regular Process for global reporting and assessment of the state of the marine environment, including socio-economic aspects (the "Regular Process"), pursuant to paragraph 179 of General Assembly resolution 64/71 of 4 December 2009, the Secretary-General, in the second part of his report,[401] presented the views received from States on the fundamental building blocks of the Regular Process, namely capacity-building, knowledge and methods of analysis, networking, and effective communication. This part of the report also presents the views of States on other fundamental building blocks identified by States, including the objective, scope and characteristics of the Regular Process, institutional arrangements, and financial and other support.

Pursuant to the request contained in paragraph 202 of General Assembly resolution 64/71, the Secretary-General, in the first part of his report to the sixty-fifth session of the General Assembly, focused on the topic chosen for the eleventh meeting of the United Nations Open-ended Informal Consultative Process on Oceans and the Law of the Sea, namely "Capacity-building in ocean affairs and the law of the sea, including marine science".[402] That part of the report also examined the relevance and scope of capacity-building, presents an overview of the capacity-building needs of States in marine science and other areas of ocean affairs and the law of the sea and reviews current capacity-building activities and initiatives in those areas. The report also addressed the challenges in

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[396] For an overview of some of the activities undertaken to combat piracy off the coast of Somalia in 2010, see Report of the Secretary-General pursuant to Security Council resolution 1897 (2009), S/2010/556.

[397] S/2010/394.

[398] For an overview of some of the activities undertaken by the Special Adviser on Legal Issues related to Piracy and Armed Robbery off the Coast of Somalia, see Report of the Secretary-General pursuant to Security Council resolution 1872 (2009), S/2010/675.

[399] See A/65/69/Add.2 and www.imo.org.

[400] See www.imo.org and www.unodc.org.

[401] A/65/69/Add.1.

[402] A/65/69. The eleventh meeting of the Informal Consultative Process was held in New York from 21 to 25 June 2010.

implementing capacity-building activities and initiatives, and identified opportunities for ways to move forward.[403]

The Secretary-General also prepared a report[404] for the resumed Review Conference on the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (the "Agreement"),[405] which contained an overview of the status and trends of straddling fish stocks and highly migratory fish stocks, discrete high seas stocks and non-target, associated and dependent species. The report also provided a review and analysis of the extent to which the recommendations adopted by the Review Conference in 2006 had been implemented by States and regional fisheries management organizations and arrangements (RFMO/As), including a description of relevant activities of the Food and Agriculture Organization of the United Nations, as well as specific information on the capacity-building needs of developing States in relation to the implementation of the Agreement. In addition, the report provided an overview of the performance reviews of States and RFMO/As that had taken place, including a description of the primary recommendations of those performance reviews. The report concluded that there had been no major changes in the overall state of stocks and fisheries catches since the last assessment in 2005, and the majority of species for which information was available were still considered either fully exploited or overexploited. States and RFMO/As had taken significant actions to implement the recommendations adopted by the Review Conference in 2006 and further efforts were needed. In addition, increased assistance was needed to enhance the capacity of developing States to conserve and manage straddling fish stocks and highly migratory fish stocks in areas under their national jurisdiction and to enable their participation in high seas fisheries for these stocks.

As reported by the Secretary-General,[406] the resumed Review Conference assessed the effectiveness of the Agreement in securing the conservation and management of straddling fish stocks and highly migratory fish stocks and conducted a review of the implementation of the recommendations adopted at the Review Conference in 2006.[407] The resumed Review Conference adopted additional recommendations addressed to States and regional economic integration organizations, including a recommendation that the Informal Consultations of States Parties to the Agreement continued and that the Agreement be kept under review through the resumption of the Review Conference at a date not earlier than 2015.[408]

In regards to the conservation and management of marine fishery resources, the Secretary-General reported on the review conducted by the General Assembly in 2009 of

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[403] For a report of the eleventh Meeting see A/65/164.

[404] Report submitted to the resumed Review Conference on the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks in accordance with paragraph 32 of General Assembly resolution 63/112 to assist it in discharging its mandate under article 36, paragraph 2, of the Agreement (A/CONF.210/2010/1).

[405] The Review Conference was held in New York from 24 to 28 May 2010, pursuant to General Assembly resolutions 63/112 and 64/72.

[406] See A/65/69/Add.2, chapter II.C.

[407] A/CONF.210/2010/7.

[408] A/CONF.210/2010/7, Annex.

the actions taken by States and RFMO/As to regulate bottom fishing activities and protect vulnerable marine ecosystems pursuant to paragraphs 83 to 90 of resolution 61/105.[409] The Secretary-General also reported on the approval by the Conference of the Food and Agriculture Organization of the United Nations in 2009 of the Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing, as well as issues relating to performance reviews of RFMO/As, a global record of fishing vessels, cooperation among regional fisheries management organizations and the conservation and management of highly migratory species.[410]

(*b*) Consideration by the General Assembly

(i) *Oceans and law of the sea*

The General Assembly considered the agenda item entitled "Oceans and the law of the sea" on 7 December 2010, having before it the following documents: report of the Secretary-General on oceans and the law of the sea;[411] letter dated 16 March 2010 from the Co-Chairpersons of the *Ad Hoc* Open-ended Informal Working Group to study issues relating to the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction to the President of the General Assembly;[412] report on the work of the United Nations Open-ended Informal Consultative Process on Oceans and the Law of the Sea at its eleventh Meeting: letter dated 22 July 2010 from the Co-Chairpersons of the Consultative Process addressed to the President of the General Assembly;[413] and report on the work of the *Ad Hoc* Working Group of the Whole on the regular process for global reporting and assessment of the state of the marine environment, including socio-economic aspects: letter dated 7 September 2010 from the Co-Chairs of the *Ad Hoc* Working Group of the Whole addressed to the President of the General Assembly.[414] On 7 December 2010, the General Assembly, without reference to a Main Committee, adopted resolution 65/37[415] entitled "Oceans and the law of the sea".

As in the previous years, the resolution covers 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 ISA and ITLOS; the continental shelf and the work of 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.

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[409] See A/65/69/Add.2, chapter IX, A.

[410] *Ibid.*

[411] A/65/69, A/65/69/Add.1 and Add.2.

[412] A/65/68.

[413] A/65/164.

[414] A/65/358.

[415] The resolution was adopted by a recorded vote of 123 votes to 1, with 2 abstentions.

(ii) *Sustainable fisheries*

At the same meeting held on 7 December 2010, the General Assembly considered the agenda item entitled "Oceans and the law of the sea: sustainable fisheries, including through the 1995 Agreement for the Implementations 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 General Assembly had before it the report of the Secretary-General to the resumed Review Conference on United Nations Fish Stocks Agreement.[416] On 7 December 2010, the General Assembly, without reference to a Main Committee, adopted resolution 65/38[417] on this agenda item.

The resolution addresses a number of issues, including, achieving 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.

10. Crime prevention and criminal justice[418]

(*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[419] 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 fourth session of the Conference will be held in 2011.

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[416] See "Report submitted to the resumed Review Conference on the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks in accordance with paragraph 32 of General Assembly resolution 63/112 to assist it in discharging its mandate under article 36, paragraph 2, of the Agreement" (A/CONF.210/2010/1).

[417] The resolution, 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", was adopted without a vote.

[418] 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.

[419] United Nations, *Treaty Series,* vol. 2349, p. 41.

(*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 nineteenth session of the Commission on Crime Prevention and Criminal Justice was held in Vienna from 17 to 21 May 2010 and 3 December 2010, respectively. According to decision 2009/246 of 30 July 2009 by the Economic and Social Council, the prominent theme for the nineteenth session of the Commission was "Protection against illicit trafficking in cultural property".[420]

In its annual report,[421] CCPCJ brought to the attention of the Economic and Social Council a number of resolutions, including resolution 19/1 entitled "Strengthening public-private partnerships to counter crime in all its forms and manifestations", resolution 19/2 entitled "Strengthening the collection, analysis and reporting of comparable crime-related data", resolution 19/4 entitled "Measures for achieving progress on the issue of trafficking in persons, pursuant to the Salvador Declaration on Comprehensive Strategies for Global Challenges: Crime Prevention and Criminal Justice Systems and Their Development in a Changing World", resolution 19/5 entitled "International cooperation in the forensic field", resolution 19/6 entitled "Countering maritime piracy off the coast of Somalia", and resolution 19/7 entitled "Strengthening of regional networks for international cooperation in criminal matters".

In resolution 19/4, the Commission, *inter alia*, urged Member States that had not yet done so to consider ratifying or acceding to the United Nations Convention against Transnational Organized Crime, 2000[422] and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, 2000 supplementing that Convention,[423] and also urged States Parties to those instruments that had not yet done so to implement all aspects of them fully, including through the enactment of specific legislation on trafficking in persons. Moreover, the Commission exhorted Member States to consider, within the framework of their respective national laws, among other measures, the application of criminal penalties or other penalties to consumers or users who intentionally and knowingly use the services of victims of trafficking for any kind of exploitation.

In resolution 19/7, the Commission, *inter alia*, recommended that the Conference of the Parties to the United Nations Convention against Transnational Organized Crime

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[420] *Official records of the Economic and Social Council 2009, Supplement No. 1* (E/2009/99), p. 139.

[421] *Official records of the Economic and Social Council 2010, Supplement No. 10* (E/2010/30 E/CN.15/2010/20).

[422] United Nations, *Treaty Series*, vol. 2225, p. 209.

[423] *Ibid.*, vol. 2237, p. 319.

consider inviting existing regional networks to participate in its fifth session, with the aim of improving cooperation between regional networks, the United Nations Office on Drugs and Crime and the States Parties to the United Nations Convention against Transnational Organized Crime and the Protocols thereto.[424]

(*c*) Economic and Social Council

On 22 July 2010, following the submission by the Commission on Crime Prevention and Criminal Justice of a draft resolution, the Economic and Social Council adopted resolution 2010/20, entitled "Support for the development and implementation of an integrated approach to programme development at the United Nations Office on Drugs and Crime".

On the same day, the Council also adopted another six resolutions on this item,[425] which the Commission on Crime Prevention and Criminal Justice had recommended to the Economic and Social Council for approval for adoption by the General Assembly.

(*d*) General Assembly

On 21 December 2010, the General Assembly adopted, on the recommendation of the Third Committee,[426] six resolutions under this agenda item, of which four are highlighted below.[427]

The Assembly adopted resolution 65/228 entitled "Strengthening crime prevention and criminal justice responses to violence against women". In this resolution, the Assembly, *inter alia*, recognized that the term "women", except where otherwise specified, encompasses "girl children". The Assembly reaffirmed that discrimination on the basis of sex is contrary to the Charter of the United Nations, the Convention on the Elimination of All Forms of Discrimination against Women, 1979[428] and other international human rights instruments and that its elimination is an integral part of efforts towards the elimination of all forms of violence against women. The Assembly recalled the inclusion of gender-related crimes and crimes of sexual violence in the Rome Statute of the International Criminal Court, 1998[429] as well as the recognition by the *ad hoc* international criminal tribunals that rape can constitute a war crime, a crime against humanity or a constitutive act with respect to genocide or torture. The Assembly stressed that "violence against women" means any act

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[424] *Ibid.*, vol. 2225, p. 209, vol. 2237, p. 319, and vol. 2241, p. 507.

[425] Resolution 2010/15, entitled "Strengthening crime prevention and criminal justice responses to violence against women", resolution 2010/16, entitled "United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules)", resolutions 2010/17 and 2010/21, entitled "Realignment of the functions of the United Nations Office on Drugs and Crime and changes to the strategic framework", and resolutions 2010/18 and 2010/19, entitled "Twelfth United Nations Congress on Crime Prevention and Criminal Justice".

[426] For the report of the Third Committee, see A/65/457.

[427] The General Assembly also adopted resolutions 65/231 entitled "United Nations African Institute for the Prevention of Crime and the Treatment of Offenders", and 65/227 entitled "Realignment of the functions of the United Nations Office on Drugs and Crime and changes to the strategic framework".

[428] United Nations, *Treaty Series*, vol. 1249, p. 13.

[429] *Ibid.*, vol. 2187, p. 3.

of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life. The Assembly adopted the guidelines in the updated Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice, annexed to this resolution,[430] and urged Member States to end impunity for violence against women by investigating, prosecuting with due process and punishing all perpetrators, by ensuring that women have equal protection under the law and equal access to justice and by holding up to public scrutiny and countering those attitudes that foster, justify or tolerate any form of violence against women. The Assembly also urged Member States to enhance their mechanisms and procedures for protecting victims of violence against women in the criminal justice system, taking into account, *inter alia*, the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power,[431] and to provide to that end specialized counselling and assistance.

The Assembly adopted resolution 65/229 entitled "United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules)". In this resolution, the Assembly, *inter alia*, recalled the United Nations standards and norms in crime prevention and criminal justice primarily related to the treatment of prisoners, in particular the Standard Minimum Rules for the Treatment of Prisoners,[432] the procedures for the effective implementation of the Standard Minimum Rules for the Treatment of Prisoners,[433] the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment[434] and the Basic Principles for the Treatment of Prisoners.[435] The Assembly also recalled the United Nations standards and norms in crime prevention and criminal justice primarily related to alternatives to imprisonment, in particular the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules)[436] and the basic principles on the use of restorative justice programmes in criminal matters.[437] The Assembly took into consideration the Vienna Declaration on Crime and Justice: Meeting the Challenges of the Twenty-first Century,[438] in which Member States committed themselves, *inter alia*, to the development of action-oriented policy recommendations based on the special needs of women as prisoners and offenders, and the plans of action for the implementation of the Declaration.[439] The Assembly called attention to the Bangkok Declaration on Synergies and Responses: Strategic Alliances in Crime

[430] See *Official Records of the Economic and Social Council, 2010, Supplement No. 10* (E/2010/30), para. 150.

[431] General Assembly resolution 40/34, of 29 November 1985, annex.

[432] *Human Rights: A Compilation of International Instruments*, vol. I, Part I: *Universal Instruments* (United Nations publication, Sales No. E.02.XIV.4 (vol. I, Part I)), sect. J, No. 34, p. 273.

[433] Economic and Social Council resolution 1984/47 of 25 May 1984, annex.

[434] General Assembly resolution 43/173 9 December 1988, annex.

[435] General Assembly resolution 45/111, 14 December 1990, annex.

[436] General Assembly resolution 45/110, 14 December 1990, annex.

[437] Economic and Social Council resolution 2002/12 of 24 July 2002, annex.

[438] General Assembly resolution 55/59, 4 December 2000, annex.

[439] General Assembly resolution 56/261, 31 January 2002, annex.

Prevention and Criminal Justice,[440] as it relates specifically to women in detention and in custodial and non-custodial settings and recalled Commission on Crime Prevention and Criminal Justice resolution 18/1 of 24 April 2009,[441] in which the Commission requested the Executive Director of the United Nations Office on Drugs and Crime to convene in 2009 an open-ended intergovernmental expert group meeting to develop supplementary rules specific to the treatment of women in detention and in custodial and non-custodial settings. The Assembly also recalled that the four regional preparatory meetings for the Twelfth United Nations Congress on Crime Prevention and Criminal Justice welcomed the development of a set of supplementary rules[442] and the Salvador Declaration on Comprehensive Strategies for Global Challenges: Crime Prevention and Criminal Justice Systems and Their Development in a Changing World,[443] in which Member States recommended that the Commission on Crime Prevention and Criminal Justice consider the draft United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders as a matter of priority for appropriate action. The Assembly adopted the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders, annexed to this resolution, and approved the recommendation of the Twelfth United Nations Congress on Crime Prevention and Criminal Justice that the Rules should be known as "the Bangkok Rules". The Assembly recognized that, in view of the great variety of legal, social, economic and geographical conditions in the world, not all of the rules can be applied equally in all places and at all times; and that they should, however, serve to stimulate a constant endeavour to overcome practical difficulties in their application, in the knowledge that they represent, as a whole, global aspirations amenable to the common goal of improving outcomes for women prisoners, their children and their communities.

The Assembly adopted resolution 65/230 entitled "Twelfth United Nations Congress on Crime Prevention and Criminal Justice". In this resolution, the Assembly, *inter alia*, bore in mind the United Nations Millennium Declaration,[444] adopted by the Heads of State and Government at the Millennium Summit of the United Nations on 8 September 2000, in which Heads of State and Government resolved, *inter alia*, to strengthen respect for the rule of law in international as well as in national affairs; to take concerted action against international terrorism and accede as soon as possible to all the relevant international conventions; to redouble their efforts to implement their commitment to counter the world drug problem; and to intensify their efforts to fight transnational crime in all its dimensions, including trafficking as well as smuggling in human beings and money-laundering. The Assembly took note with appreciation of the report of the Twelfth United Nations Congress on Crime Prevention and Criminal Justice,[445] and endorsed the Salvador Declaration on Comprehensive Strategies for Global Challenges: Crime Prevention and Crimi-

[440] General Assembly resolution 60/177, 16 December 2005, annex.

[441] See *Official Records of the Economic and Social Council, 2009, Supplement No. 10* (E/2009/30), chap. I, sect. D.

[442] A/CONF.213/RPM.1/1, A/CONF.213/RPM.2/1, A/CONF.213/RPM.3/1 and A/CONF.213/RPM.4/1.

[443] A/CONF.213/18, chap. I, resolution 1.

[444] General Assembly resolution 55/2 of 8 September 2000.

[445] A/CONF.213/18.

nal Justice Systems and Their Development in a Changing World[446] adopted by the Twelfth Congress, as approved by the Commission on Crime Prevention and Criminal Justice and annexed to this resolution. The Assembly requested the Commission on Crime Prevention and Criminal Justice to establish, in line with paragraph 42 of the Salvador Declaration, an open-ended intergovernmental expert group, to be convened prior to the twentieth session of the Commission, to conduct a comprehensive study of the problem of cybercrime and responses to it by Member States, the international community and the private sector, including the exchange of information on national legislation, best practices, technical assistance and international cooperation, with a view to examining options to strengthen existing and to propose new national and international legal or other responses to cybercrime. The Assembly also requested the Commission to establish, in line with paragraph 49 of the Salvador Declaration, an open-ended intergovernmental expert group, to be convened between the twentieth and twenty-first sessions of the Commission, to exchange information on best practices, as well as national legislation and existing international law, and on the revision of existing United Nations standard minimum rules for the treatment of prisoners so that they reflect recent advances in correctional science and best practices, with a view to making recommendations to the Commission on possible next steps.

The General Assembly adopted resolution 65/232 entitled "Strengthening the United Nations Crime Prevention and Criminal Justice Programme, in particular its technical cooperation capacity". In this resolution, the Assembly, *inter alia*, welcomed the adoption of the United Nations Global Plan of Action to Combat Trafficking in Persons,[447] stressed the need for its full and effective implementation, and expressed its view that it will, *inter alia*, enhance cooperation and a better coordination of efforts in fighting trafficking in persons and promote increased ratification and full implementation of the United Nations Convention against Transnational Organized Crime, 2000[448] and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, 2000.[449] The Assembly took note of the report entitled "The Globalization of Crime—A Transnational Organized Crime Threat Assessment" of the United Nations Office on Drugs and Crime,[450] which provides an overview of different forms of emerging crimes and their negative impact on the sustainable development of societies and took note with appreciation of the decision of the Conference of the Parties to the United Nations Convention against Transnational Organized Crime[451] at its fifth session to establish an open-ended intergovernmental working group to consider and explore options with regard to, and propose the establishment of, a mechanism or mechanisms to assist the Conference in reviewing implementation of the Convention and the Protocols thereto, and to prepare the terms of reference for such a review mechanism or mechanisms, guidelines for governmental experts and a blueprint for country review reports for consideration and possible adoption at the sixth session of the Conference. The Assembly urged States Parties to use the United Nations Conven-

[446] *Ibid.*, chap. I, resolution 1.

[447] General Assembly resolution 64/293, 30 July 2010, annex.

[448] United Nations, *Treaty Series*, vol. 2225, p. 209.

[449] *Ibid.*, vol. 2237, p. 319.

[450] United Nations publication, Sales No. E.10.IV.6.

[451] United Nations, *Treaty Series*, vol. 2225, p. 209.

tion against Transnational Organized Crime, 2000[452] for broad cooperation in preventing and combating criminal offences against cultural property, especially in returning such proceeds of crime or property to their legitimate owners, in accordance with article 14, paragraph 2, of the Convention, and invited States Parties to exchange information on all aspects of criminal offences against cultural property, in accordance with their national laws, and to coordinate administrative and other measures taken, as appropriate, for the prevention, early detection and punishment of such offences. The Assembly took note with appreciation of the fact that the number of States Parties to the United Nations Convention against Transnational Organized Crime[453] has reached one hundred and fifty-seven, which is a good indication of the commitment shown by the international community to combat this phenomenon. The Assembly also took note with appreciation of the recent establishment of a mechanism to review the implementation of the United Nations Convention against Corruption, 2003,[454] and the adoption of its terms of reference.

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-third regular and reconvened session,[455] held in Vienna 8 to 12 March and 2 December 2010, the Commission held a thematic debate entitled "in the context of a balanced approach to reducing drug demand and supply, measures to enhance awareness of the different aspects of the world drug problem, including by improving understanding of how to tackle the problem".

Fifteen resolutions[456] were adopted by the Commission and brought to the attention of the Economic and Social Council, of which twelve are highlighted below.

In resolution 53/1, entitled "Promoting community-based drug use prevention", the Commission, *inter alia*, recognized that the term "drug use" is defined by the International

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[452] *Ibid.*

[453] *Ibid.*

[454] *Ibid.*, vol. 2349, p. 41.

[455] For the report of the fifty-third session of the Commission on Narcotic Drugs, see *Official Records of the Economic and Social Council, 2010, Supplement Nos. 9 and 8A* (E/2010/28, E/CN.7/2010/18 and E/2010/28/Add.1 E/CN.7/2010/18/Add.1).

[456] For a complete list of the resolutions, see E/2010/28 E/CN.7/2010/18. See also resolution 53/16 entitled "Streamlining of the annual report questionnaire", adopted at the reconvened fifty-third session of the Commission on Narcotic Drugs on 2 December 2010 (E/2010/28 add.1 E/CN.7/2010/18/Add.1).

Narcotics Control Board in its annual report for 2009[457] as the illicit use of narcotic drugs and psychotropic substances covered by the international drug control conventions.

In resolution 53/2, entitled "Preventing the use of illicit drugs within Member States and strengthening international cooperation on policies of drug abuse prevention", the Commission, *inter alia*, recalled the Single Convention on Narcotic Drugs of 1961,[458] that Convention as amended by the 1972 Protocol,[459] the Convention on Psychotropic Substances of 1971,[460] the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988,[461] the United Nations Convention against Transnational Organized Crime of 2000[462] and the United Nations Convention against Corruption of 2003.[463] The Commission reaffirmed its unwavering commitment to ensuring that all aspects of demand reduction, supply reduction and international cooperation are addressed in full conformity with the purposes and principles of the Charter of the United Nations, international law and the Universal Declaration of Human Rights,[464] and, in particular, with full respect for the sovereignty and territorial integrity of States, the principle of non-intervention in the internal affairs of States, all human rights and fundamental freedoms, the inherent dignity of all individuals and the principles of equal rights and mutual respect among States.

In resolution 53/3, entitled "Strengthening national capacities in the administration and disposal of property and other assets confiscated in cases of drug trafficking and related offences", the Commission, *inter alia*, recalled that, in accordance with article 5, paragraph 2, of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988,[465] the parties to the Convention shall adopt such measures as may be necessary to enable their competent authorities to identify, trace and freeze or seize proceeds, property or instrumentalities derived from offences established in the Convention, for the purpose of eventual confiscation. The Commission recalled further that, in accordance with article 31, paragraph 3, of the United Nations Convention against Corruption of 2003,[466] the States Parties to the Convention shall adopt, in accordance with their domestic law, such legislative and other measures as may be necessary to regulate the administration by the competent authorities of frozen, seized or confiscated property, equipment or other instrumentalities used in or destined for use in offences established in the Convention. The Committee invited Member States to review periodically their regulatory and institutional frameworks in order to optimize investigations into assets related to drug trafficking and related offences for the purpose of ensuring greater effectiveness in law enforcement and judicial measures to pursue criminal organizations engaged in the

[457] *Report of the International Narcotics Control Board for 2009* (United Nations publication, Sales No. E.10.XI.1).

[458] United Nations, *Treaty Series*, vol. 520, p. 151.

[459] *Ibid.*, vol. 976, p. 3.

[460] *Ibid.*, vol. 1019, p. 175.

[461] *Ibid.*, vol. 1582, p. 95.

[462] United Nations, *Treaty Series*, vol. 2225, p. 209.

[463] United Nations, *Treaty Series*, vol. 2349, p. 41.

[464] General Assembly resolution 217 A (III).

[465] United Nations, *Treaty Series*, vol. 1582, p. 95.

[466] *Ibid.*, vol. 2349, p. 41.

commission of such offences and for the purpose of confiscation when acting at the request of another party, in accordance with article 5, paragraph 5, of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988.[467] The Commission also invited Member States to adopt, consistent with article 12 of the United Nations Convention on Transnational Organized Crime of 2000[468] and to the greatest extent possible within their domestic legal systems, such measures as may be necessary to enable confiscation, in cases in which proceeds of crime have been transformed or converted, in part or in full, into other property, of that property up to the assessed value of the proceeds of crime stemming from the offence.

In resolution 53/4, entitled "Promoting adequate availability of internationally controlled licit drugs for medical and scientific purposes while preventing their diversion and abuse", the Commission, *inter alia*, recalled the Single Convention on Narcotic Drugs of 1961 as amended by the 1972 Protocol,[469] in which the parties recognized that the medical use of narcotic drugs continued to be indispensable for the relief of pain and suffering and that adequate provision must be made to ensure the availability of narcotic drugs for such purposes. The Commission also recalled the Convention on Psychotropic Substances of 1971,[470] in which it is recognized that the use of psychotropic substances for medical and scientific purposes is indispensable and that their availability for such purposes should not be unduly restricted. The Commission furthermore affirmed that the international drug control conventions seek to achieve a balance between ensuring the availability of narcotic drugs and psychotropic substances under international control for medical and scientific purposes and preventing their diversion and abuse. The Commission also reaffirmed the important role entrusted to the International Narcotics Control Board to ensure, in cooperation with Governments, the availability of narcotic drugs for medical and scientific purposes and prevent illicit trafficking in and use of drugs, as set out in article 9, paragraph 4, of the 1961 Convention as amended by the 1972 Protocol.[471]

In resolution 53/8, entitled "Strengthening international cooperation in countering the world drug problem focusing on illicit drug trafficking and related offences", the Commission, *inter alia*, recalled that the three international drug control conventions, as well as the United Nations Convention against Transnational Organized Crime of 2000,[472] the United Nations Convention against Corruption of 2003[473] and other relevant international instruments, constitute the international framework for countering drug trafficking and transnational organized crime, and encouraged all Member States that have not yet done so to consider taking measures to ratify or accede to those instruments and to adopt appropriate measures to effectively implement their provisions at the national level.

In resolution 53/9, entitled "Achieving universal access to prevention, treatment, care and support for drug users and people living with or affected by HIV", the Commission, *inter alia*, requested the United Nations Office on Drugs and Crime to significantly expand

[467] *Ibid.*, vol. 1582, p. 95.

[468] *Ibid.*, vol. 2225, p. 209.

[469] United Nations, *Treaty Series*, vol. 520, p. 151 and vol. 976, p. 3.

[470] *Ibid.*, vol. 1019, p. 175.

[471] *Ibid.*, vol. 520, p. 151 and vol. 976, p. 3.

[472] *Ibid.*, vol. 2225, p. 209.

[473] *Ibid.*, vol. 2349, p. 41.

its work with relevant civil society groups in order to address the gap in access to services for people living with or affected by HIV, including drug users, to tackle the issues of stigmatization and discrimination and to support increased capacity and resources for the provision of comprehensive prevention programmes and treatment, care and related support services, in full compliance with the international drug control conventions, in accordance with national legislation, taking into account all relevant General Assembly resolutions and, when applicable, the WHO, UNODC, UNAIDS Technical Guide for Countries to Set Targets for Universal Access to HIV Prevention, Treatment and Care for Injecting Drug Users[474] and in line with Economic and Social Council resolution 2009/6 of 24 July 2009.

In resolution 53/10, entitled "Measures to protect children and young people from drug abuse", the Commission, *inter alia*, bore in mind the Convention on the Rights of the Child,[475] which provides in its article 33 that States Parties should take all appropriate measures, including legislative, administrative, social and educational measures, to protect children against the illicit use of narcotic drugs and psychotropic substances as defined in the relevant international treaties, and to prevent the use of children in the illicit production of and trafficking in such substances.

In resolution 53/11, entitled "Promoting the sharing of information on the potential abuse of and trafficking in synthetic cannabinoid receptor agonists", the Commission, *inter alia*, recognized that the use of substances that are not controlled under the international drug control treaties and that may pose potential public-health risks has emerged in recent years in several regions of the world. The Commission noted that most synthetic cannabinoid receptor agonists are not currently under international control although a number of Member States in several regions have placed several cannabinoid receptor agonists under national control. The Commission recalled that, pursuant to article 39 of the Single Convention on Narcotic Drugs of 1961,[476] article 23 of the Convention on Psychotropic Substances of 1971[477] and article 24 of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988,[478] the parties to those conventions are not precluded from adopting domestic measures of control that are stricter than those provided for in those conventions.

In resolution 53/12, entitled "Strengthening systems for the control of the movement of poppy seeds obtained from illicitly grown opium poppy crops", the Commission, *inter alia*, considered article 22 of the Single Convention on Narcotic Drugs of 1961,[479] on the prohibition of the illicit cultivation of the opium poppy and were aware that according to the provisions of the 1961 Convention, trade in poppy seeds is not subject to international control. The Commission requested the International Narcotics Control Board and the United Nations Office on Drugs and Crime to continue to assist Member States in taking appropriate measures to ensure the full implementation of article 22 of the Single Convention on Narcotic Drugs of 1961 by Member States concerned.

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[474] Available at www.unodc.org.

[475] United Nations, *Treaty Series*, vol. 1577, p. 3.

[476] *Ibid.*, vol. 520, p. 151.

[477] *Ibid.*, vol. 1019, p. 175.

[478] *Ibid.*, vol. 1582, p. 95.

[479] *Ibid.*, vol. 520, p. 151.

In resolution 53/13, entitled "Use of "poppers" as an emerging trend in drug abuse in some regions", the Commission, *inter alia*, bore in mind the Action Plan for the Implementation of the Declaration on the Guiding Principles of Drug Demand Reduction,[480] in which States committed themselves to assess the causes and consequences of the misuse of all substances. The Commission recognized that "poppers" is a term used to describe mixtures containing various alkyl nitrites, such as amyl nitrite, that are abused by inhaling, and noting that those mixtures are not currently controlled under the international drug control conventions.

In resolution 53/14, entitled "Follow-up to the implementation of the Santo Domingo Pact and Managua Mechanism", the Commission, *inter alia*, recalled the framework of cooperation established in the international drug control conventions and, in particular, article 10, paragraph 1, of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988,[481] in which the parties to the Convention commit to cooperate, directly or through competent international or regional organizations, to assist and support transit States and, in particular, developing countries in need of such assistance and support, to the extent possible, through programmes of technical cooperation on interdiction and other related activities.

In resolution 53/15, entitled "Strengthening international cooperation and regulatory and institutional frameworks for the control of substances frequently used in the manufacture of narcotic drugs and psychotropic substances", the Commission, *inter alia*, recalled national and international measures to counter the diversion of substances frequently used in the illicit manufacture of narcotic drugs and psychotropic substances adopted pursuant to the Single Convention on Narcotic Drugs of 1961,[482] that Convention as amended by the 1972 Protocol,[483] the Convention on Psychotropic Substances of 1971[484] and the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988,[485] in particular its article 12. The Committee invited Member States to consider, as appropriate, expanding the list of substances under international control that are frequently used in the illicit manufacture of narcotic drugs and psychotropic substances, in accordance with the procedure set out in article 12 of the 1988 Convention. Additionally, the Commission called upon Member States, in conformity with the provisions of the 1988 Convention and their national legislation, to review their criminal and administrative measures and, in accordance with the provisions of article 3 of the 1988 Convention, to counter trafficking in substances frequently used in the illicit manufacture of narcotic drugs and psychotropic substances, including, if they have not yet done so, establishing as an offence the unlawful manufacture, shipment, marketing or distribution of precursor chemicals under international control and sanctions for non-compliance with the administrative control measures adopted pursuant to the present resolution. The Commission also encouraged Member States, if they have not yet done so, in accordance with their respective national legislation, to: (a) consider establishing or implementing mechanisms

[480] General Assembly resolution 54/132, annex.

[481] United Nations, *Treaty Series*, vol. 1582, p. 95.

[482] *Ibid.*, vol. 520, p. 151.

[483] *Ibid.*, vol. 976, p. 3.

[484] *Ibid.*, vol. 1019, p. 175.

[485] *Ibid.*, vol. 1582, p. 95.

that facilitate the identification of transactions suspected of involving diversion and that require operators to report such transactions, including, to the extent possible, transactions involving chemicals that contain substances frequently used in the manufacture of narcotic drugs and psychotropic substances; and (b) consider requiring, or implementing the requirement, that all transactions of substances frequently used in the manufacture of narcotic drugs and psychotropic substances carried out by authorized operators be reported to the competent authority and that that information be stored in an appropriate manner to ensure its availability for the competent authority.

(*b*) Economic and Social Council

On 22 July 2010, the Economic and Social Council adopted, on the recommendation of the Commission on Narcotic Drugs, resolution 2010/21 entitled "Realignment of the functions of the United Nations Office on Drugs and Crime and changes to the strategic framework".[486] In this resolution, the Council, *inter alia*, highlighted the importance of providing legal assistance for drug control and crime prevention and the need to link the provision of such assistance to the work of the Integrated Programme and Oversight Branch of the United Nations Office on Drugs and Crime.

On the same day, the Economic and Social Council also adopted resolution 2010/20, entitled "Support for the development and implementation of an integrated approach to programme development at the United Nations Office on Drugs and Crime", in which the Council, *inter alia*, welcomed the holding in Cairo, from 27 to 29 April 2010, of the regional expert meeting organized by the League of Arab States in partnership with the United Nations Office on Drugs and Crime, and with the support of the Government of Egypt, on drug control, crime prevention and criminal justice reform in the Arab States, in order to prepare a regional programme for the period 2011–2015.

(*c*) General Assembly

On 21 December 2010, the General Assembly adopted, on the recommendation of the Third Committee, resolution 65/227 entitled "Realignment of the functions of the United Nations Office on Drugs and Crime and changes to the strategic framework". In this resolution, the General Assembly, *inter alia*, took note of the report of the Executive Director of the United Nations Office on Drugs and Crime on the changes required to the strategic framework and their implications for the Office and for the allocation of resources to the subprogrammes of the programme of work, and on the establishment of an independent evaluation unit and the sustainability of the Strategic Planning Unit of the Office,[487] and welcomed the measures taken to develop a thematic and regional programme approach to the programme of work of the Office. The Assembly recalled that, in Commission on Crime Prevention and Criminal Justice resolution 18/6 of 3 December 2009 and Commis-

[486] See also decision 2010/244 entitled "Report of the Commission on Narcotic Drugs on its fifty-third session and provisional agenda and documentation for its fifty-fourth session" and decision 2010/245 entitled "Report of the International Narcotics Control Board".

[487] E/CN.7/2010/13-E/CN.15/2010/13.

sion on Narcotic Drugs resolution 52/14 of 2 December 2009,[488] the Commissions decided that the consolidated budget for the biennium 2010–2011 for the United Nations Office on Drugs and Crime should contain adequate provisions for the establishment of a sustainable, effective and operationally independent evaluation unit, and urged the Secretariat to swiftly implement that decision and commence with the re-establishment of the independent evaluation unit without further delay. The Assembly also highlighted the importance of providing legal assistance for drug control and crime prevention and the need to link the provision of such assistance to the work of the Integrated Programme and Oversight Branch of the United Nations Office on Drugs and Crime.

On the same day, the General Assembly adopted, on the recommendation of the Third Committee, resolution 65/233 entitled "International cooperation against the world drug problem". In this resolution, the General Assembly, *inter alia*, reaffirmed the Political Declaration adopted by the General Assembly at its twentieth special session,[489] the Declaration on the Guiding Principles of Drug Demand Reduction,[490] the Action Plan on International Cooperation on the Eradication of Illicit Drug Crops and on Alternative Development,[491] the Action Plan for the Implementation of the Declaration on the Guiding Principles of Drug Demand Reduction[492] and the joint ministerial statement adopted at the ministerial segment of the forty-sixth session of the Commission on Narcotic Drugs.[493] The Assembly welcomed the efforts made by Member States to comply with the provisions of the Single Convention on Narcotic Drugs of 1961 as amended by the 1972 Protocol,[494] the Convention on Psychotropic Substances of 1971[495] and the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988.[496] The Assembly recognized that the use of substances that are not controlled under the international drug control treaties and that may pose potential public-health risks has emerged in recent years in several regions of the world, and noted the increasing number of reports about the production of substances, most commonly herbal mixtures, containing synthetic cannabinoid receptor agonists that have psychoactive effects similar to those produced by cannabis. The Assembly reaffirmed that countering the world drug problem is a common and shared responsibility that must be addressed in a multilateral setting, requires an integrated and balanced approach and must be carried out in full conformity with the purposes and principles of the Charter of the United Nations and other provisions of international law, the Universal Declaration of Human Rights,[497] and the Vienna Declaration and Programme

[488] *Official Records of the Economic and Social Council, 2009, Supplement No. 10A* (E/2009/30/Add.1), chap. I.

[489] General Assembly resolution S-20/2 of 10 June 1998, annex.

[490] General Assembly resolution S-20/3 of 10 June 1998, annex.

[491] General Assembly resolution S-20/4 E of 10 June 1998.

[492] General Assembly resolution 54/132, annex.

[493] See *Official Records of the Economic and Social Council, 2003, Supplement No. 8* (E/2003/28/Rev.1), chap. I, sect. C; see also A/58/124, sect. II.A.

[494] United Nations, *Treaty Series*, vol. 976, p. 3.

[495] *Ibid.*, vol. 1019, p. 175.

[496] *Ibid.*, vol. 1582, p. 95.

[497] General Assembly resolution 217 A (III).

of Action[498] on human rights, and, in particular, with full respect for the sovereignty and territorial integrity of States, for the principle of non-intervention in the internal affairs of States and for all human rights and fundamental freedoms, and on the basis of the principles of equal rights and mutual respect. The Assembly also recognized that crop control strategies should be in full conformity with article 14 of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988[499] and appropriately coordinated and phased in accordance with national policies in order to achieve the sustainable eradication of illicit crops. Furthermore, the Assembly urged Member States to intensify their cooperation with and assistance to transit States affected by illicit drug trafficking, directly or through the competent regional and international organizations, in accordance with article 10 of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988,[500] and on the basis of the principle of shared responsibility and the need for all States to promote and implement measures to counter the drug problem in all its aspects with an integrated and balanced approach. The Assembly also urged States that had not done so to consider ratifying or acceding to, and States Parties to implement, as a matter of priority, all the provisions of the Single Convention on Narcotic Drugs of 1961 as amended by the 1972 Protocol,[501] the Convention on Psychotropic Substances of 1971,[502] the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988,[503] the United Nations Convention against Transnational Organized Crime and the Protocols thereto[504] and the United Nations Convention against Corruption of 2003,[505] took note of the World Drug Report 2010 of the United Nations Office on Drugs and Crime[506] and the most recent report of the International Narcotics Control Board.[507]

[498] A/CONF.157/23 of 12 July 1993.

[499] United Nations, *Treaty Series*, vol. 1582, p. 95.

[500] *Ibid.*, vol. 1582, p. 95.

[501] *Ibid.*, vol. 520, p. 151 and vol. 976, p. 3.

[502] *Ibid.*, vol. 1019, p. 175.

[503] *Ibid.*, vol. 1582, p. 95.

[504] *Ibid.*, vol. 2225, p. 209, Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (United Nations, *Treaty Series*, vol. 2237, p. 319), Protocol against the Smuggling of Migrants by Land, Sea and Air (United Nations, *Treaty Series*, vol. 2241, p. 507) and Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition (United Nations, *Treaty Series*, vol. 2326, p. 208).

[505] United Nations, *Treaty Series*, vol. 2349, p. 41.

[506] United Nations publication, Sales No. E.10.XI.13.

[507] United Nations publication, Sales No. E.10.XI.1.

12. Refugees and displaced persons[508]

(*a*) Executive Committee of the Programme of the United Nations High Commissioner for Refugees[509]

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 sixty-first plenary session of the Executive Committee was held in Geneva from 4 to 8 October 2010.[510]

During its sixty-first plenary session, the Executive Committee adopted one conclusion on refugees with disabilities and other persons with disabilities protected and assisted by UNHCR.[511] In the conclusion, the Executive Committee, *inter alia*, took note of the involvement of UNHCR in the inter-agency support group for the Convention on the Rights of Persons with Disabilities[512] to support the promotion and implementation of the Convention and its Optional Protocol.[513] Moreover, the Executive Committee recommended that States include refugees and other persons with disabilities in relevant policies and programmes and provide access to services, including through the issuance of relevant documentation. The Executive Committee also encouraged States, UNHCR and relevant partners to adopt and implement appropriate and reasonable accessibility standards and recommended that States and UNHCR ensure that refugee status determination and all other relevant procedures are accessible and designed to enable persons with disabilities to fully and fairly represent their claims with the necessary support.

(*b*) United Nations Economic and Social Council

On 22 July 2010, the United Nations Economic and Social Council adopted decision 2010/246, 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-fifth session, decide on the question of enlarging the membership of the Executive Committee from seventy-nine to eighty-four States.

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[508] For complete lists of signatories and States Parties to international instruments relating to refugees that are deposited with the Secretary-General, see *Multilateral Treaties Deposited with the Secretary-General*, *Status as at 31 December 2010,* available at http://treaties.un.org/Pages/Home.aspx?lang=en.

[509] For detailed information and documents regarding this topic generally, see the website of the UNHCR at http://www.unhcr.org.

[510] For the report of the sixty-first session of the Executive Committee, see *Official Records of the General Assembly, Sixty-fifth Session, Supplement No. 12A* (A/65/12/Add.1).

[511] No. 110 (LXI) - 2010.

[512] See Annex I to General Assembly resolution 61/106 of 13 December 2006 entitled "Convention on the rights of Persons with Disabilities". The convention entered into force on 3 May 2008;

[513] *Ibid.*

(*c*) General Assembly

On 13 October 2010, the General Assembly, without reference to a Main Committee, adopted resolution 64/296 entitled "Status of internally displaced persons and refugees from Abkhazia, Georgia, and the Tskhinvali region/South Ossetia, Georgia". In this resolution, the General Assembly, *inter alia*, recognized the Guiding Principles on Internal Displacement[514] as the key international framework for the protection of internally displaced persons and recognized the right of return of all internally displaced persons and refugees and their descendants, regardless of ethnicity, to their homes throughout Georgia, including in Abkhazia and South Ossetia. The Assembly furthermore stressed the need to respect the property rights of all internally displaced persons and refugees affected by the conflicts in Georgia and to refrain from obtaining property in violation of those rights. The Assembly also reaffirmed the unacceptability of forced demographic changes.

On 10 December 2010, the General Assembly, on the recommendation of the Fourth Committee, adopted resolution 65/100 entitled "Operations of the United Nations Relief and Works Agency for Palestine Refugees in the Near East". In this resolution, the Assembly, *inter alia*, recalled Articles 100, 104 and 105 of the Charter of the United Nations, the Convention on the Privileges and Immunities of the United Nations,[515] and the Convention on the Safety of United Nations and Associated Personnel.[516] The Assembly affirmed the applicability of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949,[517] to the Palestinian territory occupied since 1967, including East Jerusalem. The Assembly took note of the agreement reached on 24 June 1994, embodied in an exchange of letters between the Agency and the Palestine Liberation Organization,[518] and, *inter alia*, encouraged the Agency, in close cooperation with other relevant United Nations entities, to continue making progress in addressing the needs and rights of children and women in its operations in accordance with the Convention on the Rights of the Child[519] and the Convention on the Elimination of All Forms of Discrimination against Women.[520] The Assembly also called upon Israel, the occupying Power, to comply fully with the provisions of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949 and to abide by Articles 100, 104 and 105 of the Charter of the United Nations and the Convention on the Privileges and Immunities of the United Nations in order to ensure the safety of the personnel of the Agency, the protection of its institutions and the safeguarding of the security of its facilities in the Occupied Palestinian Territory, including East Jerusalem.

On the same day, the General Assembly, on the recommendation of the Fourth Committee, adopted resolution 65/98 entitled "Assistance to Palestine refugees". In this resolution, the Assembly, *inter alia*, decided to invite Kuwait, in accordance with the criterion

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[514] E/CN.4/1998/53/Add.2, annex.

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

[516] *Ibid*., vol. 2051, p. 363.

[517] *Ibid*., vol. 75, p. 287.

[518] *Official Records of the General Assembly, Forty-ninth Session, Supplement No. 13* (A/49/13), annex I.

[519] United Nations, *Treaty Series*, vol. 1577, p. 3.

[520] *Ibid*., vol. 1249, p. 13.

set forth in General Assembly decision 60/522 of 8 December 2005, to become a member of the Advisory Commission of the United Nations Relief and Works Agency for Palestine Refugees in the Near East, and decided to extend the mandate of the Agency until 30 June 2014, without prejudice to the provisions of paragraph 11 of General Assembly resolution 194 (III).[521]

Also on 10 December 2010, the General Assembly, on the recommendation of the Fourth Committee, adopted resolution 65/101 entitled "Palestine refugees' properties and their revenues". In this resolution, the General Assembly, *inter alia*, recalled that the Universal Declaration of Human Rights[522] and the principles of international law uphold the principle that no one shall be arbitrarily deprived of his or her property. The Assembly noted the completion of the programme of identification and evaluation of Arab property, as announced by the Conciliation Commission in its twenty-second progress report,[523] and the fact that the Land Office had a schedule of Arab owners and a file of documents defining the location, area and other particulars of Arab property. The Assembly expressed its appreciation for the preservation and modernization of the existing records, including the land records, of the Conciliation Commission and the importance of such records for a just resolution of the plight of the Palestine refugees in conformity with resolution 194 (III).[524] The Assembly reaffirmed that the Palestine refugees are entitled to their property and to the income derived therefrom, in conformity with the principles of equity and justice, and urged the Palestinian and Israeli sides, as agreed between them, to deal with the important issue of Palestine refugees' properties and their revenues within the framework of the final status negotiations of the Middle East peace process.

On 21 December 2010, the General Assembly, on the recommendation of the Third Committee, adopted resolution 65/194 entitled "Office of the United Nations High Commissioner for Refugees". In this resolution, the Assembly, *inter alia*, reaffirmed the 1951 Convention relating to the Status of Refugees[525] and the 1967 Protocol thereto[526] as the foundation of the international refugee protection regime, recognized the importance of their full and effective application by States Parties and the values they embody, noted with satisfaction that one hundred and forty-seven States are now parties to one instrument or to both, encouraged States not parties to consider acceding to those instruments, underlined, in particular, the importance of full respect for the principle of non-refoulement, and recognized that a number of States not parties to the international refugee instruments have shown a generous approach to hosting refugees. The Assembly noted that 65 States are now parties to the 1954 Convention relating to the Status of Stateless Persons,[527] that 37 States are parties to the 1961 Convention on the Reduction of Statelessness,[528] and encouraged States that had not done so to give consideration to acceding to those instruments.

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[521] General Assembly resolution 194 (III) of 11 December 1948.

[522] General Assembly resolution 217 (III) A of 10 December 1948.

[523] *Official Records of the General Assembly, Nineteenth Session, Annexes*, Annex No. 11, document A/5700.

[524] General Assembly resolution 194 (III) of 11 December 1948.

[525] United Nations, *Treaty Series*, vol. 189, p. 137.

[526] *Ibid*., vol. 606, p. 267.

[527] *Ibid*., vol. 360, p. 117.

[528] *Ibid*., vol. 989, p. 175.

The Assembly also re-emphasized that the protection of refugees, and the prevention and reduction of statelessness, are primarily the responsibility of States. The Assembly strongly condemned attacks on refugees, asylum-seekers and internally displaced persons as well as acts that pose a threat to their personal security and well-being, and called upon all States concerned and, where applicable, parties involved in an armed conflict to take all measures necessary to ensure respect for human rights and international humanitarian law. The Assembly expressed deep concern about the increasing number of attacks against humanitarian aid workers and convoys, and emphasized the need for States to ensure that perpetrators of attacks committed on their territory against humanitarian personnel and United Nations and associated personnel do not operate with impunity and that the perpetrators of such acts are promptly brought to justice as provided for by national laws and obligations under international law.

On the same day, the General Assembly, on the recommendation of the Third Committee, adopted resolution 65/193 entitled "Assistance to refugees, returnees and displaced persons in Africa". In this resolution, the Assembly, *inter alia*, recalled the Organization of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa of 1969[529] and the African Charter on Human and Peoples' Rights,[530] and reaffirmed that the 1951 Convention relating to the Status of Refugees, together with the 1967 Protocol thereto, as complemented by the Organization of African Unity Convention of 1969, remains the foundation of the international refugee protection regime in Africa. The Assembly welcomed the adoption and the ongoing ratification process of the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa,[531] which marks a significant step towards strengthening the national and regional normative framework for the protection of, and assistance to, internally displaced persons. The Assembly noted with appreciation the Pact on Security, Stability and Development in the Great Lakes Region, adopted by the International Conference on the Great Lakes Region in 2006,[532] and its instruments, in particular two of the protocols to the Pact which are relevant to the protection of displaced persons, namely, the Protocol on the Protection of and Assistance to Internally Displaced Persons and the Protocol on the Property Rights of Returning Persons. The Assembly emphasized that States have the primary responsibility to provide protection and assistance to internally displaced persons within their jurisdiction and called upon African Member States that had not yet signed or ratified the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa[533] to consider doing so as early as possible in order to ensure its early entry into force and implementation. Concerning attacks on, and kidnapping of, national and international humanitarian workers, the Assembly called upon States to investigate fully any crime committed against humanitarian personnel and to bring to justice the persons responsible for such crimes. Furthermore, the Assembly reaffirmed the right of return and the principle of voluntary repatriation, appealed to countries of origin and countries of asylum to create conditions that are conducive to voluntary repatriation, and recognized

[529] *Ibid*., vol. 1001, p. 45.

[530] *Ibid*., vol. 1520, p. 217.

[531] Available from www.au.int.

[532] Available from www.icglr.org.

[533] Available from www.au.int.

that, while voluntary repatriation remains the pre-eminent solution, local integration and third-country resettlement, where appropriate and feasible, are also viable options for dealing with the situation of African refugees who, owing to prevailing circumstances in their respective countries of origin, are unable to return home.

Also on 21 December 2010, the General Assembly, on the recommendation of the Third Committee, adopted resolution 65/192 entitled "Enlargement of the Executive Committee of the Programme of the United Nations High Commissioner for Refugees". In this resolution, the Assembly, *inter alia*, decided to increase the number of members of the Executive Committee of the Programme of the United Nations High Commissioner for Refugees from 79 to 85 States.

13. International Court of Justice[534]

(*a*) Organization of the Court

At the end of 2010, the composition of the Court was as follows:[535]

President: Hisashi Owada (Japan);

Vice-President: Peter Tomka (Slovakia);

Judges: Abdul G. Koroma (Sierra Leone), Awn Shawkat Al-Khasawneh (Jordan), 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), Christopher Greenwood (United Kingdom of Great Britain and Northern Ireland), Hanqin Xue (China) and Joan E. Donoghue (United States of America).

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, was composed as follows:

Members:

President: Hisashi Owada;

Vice-President: Peter Tomka;

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[534] 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-fifth Session, Supplement No. 4* (A/65/4) (for the period 1 August 2009 to 31 July 2010) and *Official Records of the General Assembly, Sixty-sixth Session, Supplement No. 4* (A/66/4) (for the period 1 August 2010 to 31 July 2011) (forthcoming).

[535] Following the resignation of Judge Shi Jiuyong, former President and former Vice-President of the Court, on 28 May 2010 and the resignation of Judge Thomas Buergenthal on 6 September 2010, the General Assembly and the Security Council elected Hanqin Xue (China) and Joan E. Donoghue (United States of America) on 29 June 2010 and 9 September 2010 respectively. Pursuant to Article 15 of the Statute of the Court, Judge Xue will hold office for the remainder of Judge Shi's term, which will expire on 5 February 2012. Judge Donoghue will complete Judge Buergenthal's term, which will expire on 5 February 2015.

Judges: Abdul G. Koroma and Bruno Simma.

Substitute members:

Judges: Bernardo Sepúlveda-Amor and Leonid Skotnikov.

(*b*) Jurisdiction of the Court[536]

On 31 December 2010, 192 States were Parties to the Statute of the Court.

No declarations were made, in 2010, recognizing the compulsory of the Court jurisdiction as contemplated by Article 36, paragraph 2 of the Statute. Thus, at the end of 2010, the following 66 States had recognized such compulsory jurisdiction: Australia, Austria, Barbados, Belgium, Botswana, Bulgaria, Cambodia, 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, Republic of 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

By resolution 64/298 of 9 September 2010, the General Assembly acknowledged, without reference to a Main Committee, the content of the advisory opinion of the International Court of Justice on the *Accordance with International Law of the Unilateral Declaration of Independence in respect of Kosovo*, rendered in response to the request of the General Assembly in resolution 63/3 of 8 October 2008, and welcomed the readiness of the European Union to facilitate a process of dialogue between the parties. The process of dialogue in itself would be a factor for peace, security and stability in the region, and that dialogue would be to promote cooperation, achieve progress on the path to the European Union and improve the lives of the people.

On 28 October 2010, the General Assembly adopted decision 65/508, in which it took note of the report of the International Court of Justice for the period from 1 August 2009 to 31 July 2010.[537]

On 8 December 2010, the General Assembly adopted, on the recommendation of the First Committee, resolution 65/76 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

[536] 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.

[537] For the text of the report, see *Official Records of the General Assembly, Sixty-fifth Session, Supplement No. 4* (A/65/4).

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 requested the Secretary-General to apprise the General Assembly of that information at its sixty-sixth session.

14. International Law Commission[538]

(*a*) Membership of the Commission

On 14 July 2010, the Commission elected Mr. Huikang Huang (China) to fill the casual vacancy occasioned by the resignation of Ms. Hanqin Xue who was elected to the International Court of Justice.[539]

The membership of the International Law Commission at its sixty-second 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. Hassouna (Egypt), Mr. Mahmoud D. Hmoud (Jordan), Mr. Huikang Huang (China) (from 14 July 2010), 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) (until 29 June 2010).

(*b*) Sixty-second session of the International Law Commission

The International Law Commission held, at its seat at the United Nations Office at Geneva, the first part of its sixty-second session from 3 May to 4 June 2010, and the second part of the session from 5 July to 6 August 2010.[540] The Commission considered the topics entitled "Reservations to treaties", "Expulsion of aliens", "Effects of armed conflicts

[538] 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/.

[539] A/CN.4/632 and Add.1.

[540] For the report of the International Law Commission on the work at its sixty-second session, see *Official Records of the General Assembly, Sixty-fifth Session, Supplement No. 10* (A/65/10).

on treaties", "Protection of persons in the event of disasters", "The obligation to extradite or prosecute (*aut dedere aut judicare*)", "Treaties over time", "The Most-Favoured-Nation clause", and "Shared natural resources". The consideration by the Commission of these topics is outlined below.

As regards the topic "Reservations to treaties", the Commission had before it addendum 2 to the fourteenth report as well as the fifteenth and sixteenth reports of the Special Rapporteur, Mr. Alain Pellet.[541] Addendum 2 to the fourteenth report and the fifteenth report considered the legal effects of reservations, acceptances of reservations and objections to reservations, as well as the legal effects of interpretative declarations and reactions thereto. Following a debate in plenary on these reports, the Commission referred 37 draft guidelines to the Drafting Committee. The sixteenth report considered the issue of reservations, objections to reservations, acceptances of reservations and interpretative declarations in relation to the succession of States. Following a debate in plenary, the Commission referred 20 draft guidelines, as contained in that report, to the Drafting Committee. The Commission provisionally adopted 59 draft guidelines, together with commentaries, including 11 draft guidelines which had been provisionally adopted by the Drafting Committee at the sixty-first session (2009) and which deal with the freedom to formulate objections and with matters relating to the permissibility of reactions to reservations and of interpretative declarations and reactions thereto. The Commission thus completed the provisional adoption of the set of draft guidelines.

Concerning the topic "Expulsion of aliens", the Commission considered a set of draft articles on the protection of the human rights of persons who have been or are being expelled,[542] revised and restructured by the Special Rapporteur, Mr. Maurice Kamto, in the light of the debate which had taken place in plenary during the sixty-first session of the Commission (2009). The Commission referred the revised draft articles 8 to 15, as contained in that document, to the Drafting Committee. The Commission also had before it the sixth report of the Special Rapporteur, which considered collective expulsion, disguised expulsion, extradition disguised as expulsion, the grounds for expulsion, detention pending expulsion and expulsion proceedings.[543] Following a debate in plenary, the Commission referred to the Drafting Committee draft articles A, 9, B1 and C1, as contained in the sixth report, and draft articles B and A1 as revised by the Special Rapporteur during the session. The Commission also considered a new draft work plan with a view to restructuring the draft articles,[544] which had been presented by the Special Rapporteur to the Commission at its sixty-first session (2009), as well as comments and information received thus far from Governments.[545]

As regards the topic "Effects of armed conflicts on treaties", the Commission commenced the second reading of the draft articles on the effects of armed conflicts on treaties (which had been adopted on first reading at its sixtieth session (2008)) on the basis of the first report of the Special Rapporteur, Mr. Lucius Caflisch.[546] Following a debate in plenary

[541] A/CN.4/614/Add.2, A/CN.4/624 and Add.1 and 2, and A/CN.4/626 and Add.1.

[542] A/CN.4/617.

[543] A/CN.4/625 and Add.1.

[544] A/CN.4/618.

[545] A/CN.4/604 and A/CN.4/628.

[546] A/CN.4/627 and Add.1.

on the report of the Special Rapporteur, the Commission referred all the draft articles, and the annex, proposed by the Special Rapporteur to the Drafting Committee.

In relation to the topic "Protection of persons in the event of disasters", the Commission had before it the third report of the Special Rapporteur, Mr. Eduardo Valencia-Ospina, dealing with the humanitarian principles of neutrality, impartiality and humanity, as well as the underlying concept of respect for human dignity.[547] The report also considered the question of the primary responsibility of the affected State to protect persons affected by a disaster on its territory, and undertook an initial consideration of the requirement that external assistance be provided on the basis of the consent of the affected State. Following a debate in plenary, the Commission decided to refer draft articles 6 to 8, as proposed by the Special Rapporteur, to the Drafting Committee. The Commission also adopted draft articles 1 to 5, which it had taken note of at its sixty-first session (2009), together with commentaries. The Commission subsequently took note of four draft articles provisionally adopted by the Drafting Committee, relating to the humanitarian principles in disaster response, the inherent human dignity of the human person, the obligation to respect the human rights of affected persons, and the role of the affected State.[548]

As regards the topic "The obligation to extradite or prosecute (*aut dedere aut judicare*)", the Commission reconstituted the Working Group. The Working Group continued its discussions with the aim of specifying the issues to be addressed to further facilitate the work of the Special Rapporteur, Mr. Zdzislaw Galicki. It had before it a Survey of multilateral conventions which may be of relevance for the Commission's work on the topic, prepared by the Secretariat,[549] and a working paper prepared by the Special Rapporteur containing observations and suggestions based on the general framework proposed in 2009 and drawing upon the survey by the Secretariat.[550]

In relation to the topic "Treaties over time", the Commission reconstituted the Study Group on Treaties over time. The Study Group began its work on the aspects of the topic relating to subsequent agreements and practice, on the basis of an introductory report prepared by its Chairman, Mr. Georg Nolte, on the relevant jurisprudence of the International Court of Justice and of arbitral tribunals of *ad hoc* jurisdiction. A variety of issues relating to the significance and role of subsequent agreements and practice in the interpretation of treaties, and possibly also in their modification, were touched upon in the discussions.

As regards the topic "The Most-Favoured-Nation clause", the Commission reconstituted the Study Group on the Most-Favoured-Nation clause, under co-chairmanship of Mr. Donald McRae and Mr. A. Rohan Perera. The Study Group considered and reviewed the various papers prepared on the basis of the framework which had been agreed upon in 2009, including a catalogue of MFN provisions and papers on the 1978 draft articles, the practice of GATT and WTO, the work of OECD and UNCTAD on MFN, and the "*Maffezini*" issue, and set out a programme of work for the next year.

In relation to the topic "Shared natural resources", the Commission once more established the Working Group on Shared natural resources, chaired by Mr. Enrique Candioti.

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[547] A/CN.4/629.

[548] A/CN.4/L.776.

[549] A/CN.4/630.

[550] A/CN.4/L.774.

The Working Group continued its assessment on the feasibility of future work on oil and gas on the basis of a working paper prepared by Mr. Shinya Murase.[551] The working group considered all aspects of the matter, taking into account the views of governments, including as reflected in the working paper, as well as in light of its previous discussions. The Commission endorsed the recommendation of the Working Group that the Commission should not take up the consideration of the oil and gas aspects of the topic "Shared natural resources".

Finally, the Commission, pursuant to its 2009 decision, devoted a discussion on "Settlement of disputes clauses". It had before it a Note on Settlement of disputes clauses, prepared by the Secretariat.[552] The Commission decided to continue debate on the issue under "Other matters" at its next session. It was agreed that Mr. Michael Wood would prepare a working paper for that purpose. The Commission also set up the Planning Group to consider its programme, procedures and working methods, and reconstituted the Working Group on the Long-term programme of work 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-second session" at its 19th to 26th and 28th meetings, from 25 to 29 October and on 1 and 11 November 2010, respectively. The Chairman of the International Law Commission at its sixty-second session introduced the report of the Commission in three parts: chapters I to IV and XIII (Part I) at the 19th meeting, on 25 October 2010, chapter V (Part II) at the 21st meeting, on 27 October 2010, chapters VI and VII (Part II continued) at the 22nd meeting, on 27 October 2010, and chapters VIII, X, XI and XII (Part III) at the 25th meeting, on 29 October 2010.[553]

At the 28th meeting, on 11 November 2010, the representative of New Zealand, on behalf of the Bureau, introduced a draft resolution entitled "Report of the International Law Commission on the work of its sixty-second session". At the same meeting, the Committee adopted the draft resolution without a vote.[554]

(*d*) General Assembly

On 6 December 2010, the General Assembly adopted, on the recommendation of the Sixth Committee, resolution 65/26, by which it took note of the report of the International Law Commission on the work of its sixty-second session.[555] The Assembly, *inter alia*, expressed its appreciation to the International Law Commission for the work accomplished at its sixty-second session, and drew the attention of Governments to the importance for the work of the Commission of having their views, in particular on the topics "Reservations

[551] A/CN.4/621.

[552] A/CN.4/623.

[553] Summary records of the Sixth Committee, A/C.6/65/SR.19, 21, 22 and 25.

[554] A/C.6/65/L.20.

[555] *Official Records of the General Assembly, Sixty-fifth Session, Supplement No. 10* (A/65/10).

to treaties" and "Treaties over time". Furthermore, the Assembly invited Governments to submit to the secretariat of the Commission, by 31 January 2011, any further observations on the entire set of draft guidelines constituting the Guide to Practice on Reservations to Treaties, provisionally adopted by the Commission at its sixty-second session, with a view to finalizing the Guide at the sixty-third session. The Assembly also drew the attention of Governments to the importance for the International Law Commission of having their comments and observations by 1 January 2011 on the draft articles and commentaries on the topic "Responsibility of international organizations" adopted on first reading by the Commission at its sixty-first session and invited the International Law Commission to give priority to its consideration of the topics "Immunity of State officials from foreign criminal jurisdiction" and "The obligation to extradite or prosecute (*aut dedere aut judicare*)".

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[556] and of paragraphs 396 to 398 of the report of the International Law Commission, and requested the Secretary-General to continue his efforts to identify concrete options for support for the work of special rapporteurs, additional to those provided under General Assembly resolution 56/272 of 27 March 2002. In addition, the Assembly welcomed the enhanced dialogue between the International Law Commission and the Sixth Committee at the sixty-fifth 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-sixth session of the Assembly. Finally, the General Assembly approved the conclusions reached by the International Law Commission in paragraph 399 of its report regarding the processing and issuance of reports by special rapporteurs, and reaffirmed its previous decisions concerning the documentation and summary records of the Commission.[557]

15. United Nations Commission on International Trade Law[558]

(*a*) Forty-third session of the Commission

The United Nations Commission on International Trade Law (UNCITRAL) held its forty-third session in New York from 21 June to 9 July 2010 and adopted its report on 25 and 30 June and 2 and 9 July 2010.[559]

At the session, the Commission finalized and adopted the UNCITRAL Arbitration Rules as revised in 2010.[560] The Commission entrusted Working Group II (Arbitration and Conciliation) with the task of preparing a legal standard on the topic of transparency in

[556] A/65/186.

[557] 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.

[558] For the membership of the United Nations Commission on International Trade Law, see *Official Records of the General Assembly, Sixty-fifth Session, Supplement No. 17* (A/65/17), para. 4.

[559] *Ibid.*, paras. 1 and 12.

[560] *Ibid.*, para. 187.

treaty-based investor-State arbitration.[561] The Commission entrusted the Secretariat with the preparation of recommendations to arbitral institutions and other relevant bodies with respect to the UNCITRAL Arbitration Rules as revised in 2010, for consideration by the Commission at a future session.[562] The Commission noted that, in view of the extended role granted to appointing authorities under the revised Rules, the recommendations would promote the use of the revised Rules, and that arbitral institutions in all parts of the world would be more inclined to accept acting as appointing authorities if they had the benefit of such guidelines.[563] It was agreed that these recommendations should follow the same pattern as the "Recommendations to assist arbitral institutions and other interested bodies with regard to arbitration under the UNCITRAL Arbitration Rules",[564] adopted by the Commission in 1982,[565] that aimed at facilitating the use of the 1976 UNCITRAL Arbitration Rules.[566]

At its forty-third session, the Commission also finalized and adopted the "UNCITRAL Legislative Guide on Secured Transactions. Supplement on Security Rights in Intellectual Property"[567] and part three of the UNCITRAL Legislative Guide on Insolvency Law on the treatment of enterprise groups in insolvency in the format of recommendations and commentary.[568]

As regards future work of UNCITRAL Working Group V (Insolvency Law), the Commission entrusted the Working Group with work on two topics: (i) provision of guidance on the interpretation and application of selected concepts of the UNCITRAL Model Law on Cross-Border Insolvency[569] relating to centre of main interests and possibly to develop a model law or provisions on insolvency law addressing selected international issues, including jurisdiction, access and recognition, in a manner that would not preclude the development of a convention; and (ii) the responsibility and liability of directors and officers of an enterprise in insolvency and pre-insolvency cases, excluding criminal law issues.[570] In the area of insolvency law, the Commission also agreed that the Secretariat, resources permitting, should undertake a study on the feasibility and possible scope of an instrument regarding the cross-border resolution of large and complex financial institutions, and develop a draft text that provided a judicial perspective on the use and interpretation of the UNCITRAL Model Law on Cross-Border Insolvency.[571]

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[561] *Ibid.*, para. 190.

[562] *Ibid.*, para. 189.

[563] *Ibid.*

[564] *Ibid., Thirty-seventh Session, Supplement No. 17* and corrigenda (A/37/17 and Corr.1 and 2), annex I.

[565] *Ibid.*, paras. 74–85.

[566] *Ibid.*, *Sixty-fifth Session, Supplement No. 17* (A/65/17), para. 189. For the text of the 1976 UNCITRAL Arbitration Rules, see ibid., *Thirty-first Session, Supplement No. 17* (A/31/17), para. 57.

[567] *Ibid.*, *Sixty-fifth Session, Supplement No. 17* (A/65/17), para. 227.

[568] *Ibid.*, para. 233.

[569] United Nations publication, Sales No. E.99.V.3.

[570] *Official Records of the General Assembly, Sixty-fifth Session, Supplement No. 17* (A/65/17), para. 259.

[571] *Ibid.*, paras. 260–261.

As regards future work of UNCITRAL Working Group VI (Security Interests), the Commission entrusted the Working Group with the preparation of a text on registration of security rights in movable assets as a matter of priority.[572] It was also agreed that topics of security rights in non-intermediated securities, a model law based on the recommendations of the UNCITRAL Legislative Guide on Secured Transactions[573] and a contractual guide on secured transactions should be retained in the future programme of Working Group VI. In the area of security interests, the Commission also requested the Secretariat to prepare a study, within existing resources, that would identify specific topics and discuss the desirability and feasibility of the Commission preparing a legal text with a view to removing specific obstacles to international trade in the context of intellectual property licensing practices.[574] The Commission agreed that this topic is at the intersection of intellectual property and commercial law, and, thus, should be undertaken in cooperation with other organizations, such as the World Intellectual Property Organization (WIPO).[575]

At the session, the Commission considered reports on the work of the seventeenth and eighteenth sessions of its Working Group I (Procurement),[576] entrusted with the revision of the 1994 UNCITRAL Model Law on Procurement of Goods, Construction and Services.[577] The Commission requested the Working Group to complete its work on the revision of that Model Law during the next two sessions of the Working Group and present a draft revised model law for finalization and adoption by the Commission at its forty-fourth session, in 2011.[578] The Commission instructed the Working Group to exercise restraint in revisiting issues on which decisions had already been taken.[579]

The Commission established a new working group to undertake work in the field of online dispute resolution relating to cross-border e-commerce transactions, including business-to-business and business-to-consumer transactions. It was agreed that the form of the legal standard to be prepared should be decided by the working group after further discussion of the topic.[580]

The Commission considered its future work programme in the areas of electronic commerce[581] and microfinance[582] and requested the Secretariat to convene colloquiums with the purpose of identifying a roadmap for future work by the Commission in those areas.[583] The Commission also requested the Secretariat to continue its active participation in the work on single windows carried out by the Joint (UNCITRAL-WCO-the United Nations Centre for Trade Facilitation and Electronic Business) Legal Task Force and by

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[572] *Ibid.*, para. 268.

[573] United Nations publication, Sales No. E.09.V.12.

[574] *Official Records of the General Assembly, Sixty-fifth Session, Supplement No. 17* (A/65/17), para. 273.

[575] *Ibid.*, para. 270.

[576] *Ibid.*, para. 237.

[577] *Ibid., Forty-ninth Session, Supplement No. 17* and corrigendum (A/49/17 and Corr.1), annex I.

[578] *Ibid., Sixty-fifth Session, Supplement No. 17* (A/65/17), para. 239.

[579] *Ibid.*

[580] *Ibid.*, para. 257.

[581] *Ibid.*, paras. 240–250.

[582] *Ibid.*, paras. 274–280.

[583] *Ibid.*, paras. 250 and 280.

other organizations, with a view to exchanging views and formulating recommendations on possible legislative work in that domain.[584]

The Commission considered the progress made by the Secretariat on monitoring implementation of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958 (the New York Convention),[585] and noted with appreciation that the information collected during the project implementation had been published on the UNCITRAL website in the language in which it had been received.[586] The Commission requested the Secretariat to pursue its efforts towards the preparation of a guide to enactment of the New York Convention.[587]

In the context of review of its working methods,[588] the Commission unanimously adopted the Summary of conclusions on UNCITRAL rules of procedures and methods of work, as reproduced in annex III to the report of the session.[589]

The Commission continued consideration of its technical assistance to law reform activities,[590] promotion of ways and means of ensuring a uniform interpretation and application of UNCITRAL legal texts,[591] status and promotion of UNCITRAL texts,[592] measures aimed at coordination and cooperation with other organizations related to the harmonization and unification of international trade law,[593] reports of other international organizations,[594] and the role of UNCITRAL in promoting the rule of law at the national and international levels.[595] The Commission also took note of relevant General Assembly resolutions,[596] the international commercial arbitration moot competitions held worldwide,[597] the internship programme,[598] and the strategic framework for the biennium 2012–2013.[599]

(*b*) General Assembly

At its sixty-fifth session, the General Assembly, on the recommendation of the Sixth Committee,[600] adopted resolution 65/21 on the report of the Commission on the work of

[584] *Ibid.*, para. 244.

[585] United Nations, *Treaty Series*, vol. 330, p. 3.

[586] *Official Records of the General Assembly, Sixty-fifth Session, Supplement No. 17* (A/65/17), para 284.

[587] *Ibid.*

[588] *Ibid.*, paras. 299–306.

[589] *Ibid.*, para. 305.

[590] *Ibid.*, paras. 285–289.

[591] *Ibid.*, paras. 290–293.

[592] *Ibid.*, paras. 294–298.

[593] *Ibid.*, paras. 307–309.

[594] *Ibid.*, paras. 310–312.

[595] *Ibid.*, paras. 313–336.

[596] *Ibid.*, paras. 340–342.

[597] *Ibid.*, paras. 337–339.

[598] *Ibid.*, paras. 343–344.

[599] *Ibid.*, paras. 345–347.

[600] Report of the Sixth Committee (A/65/465).

its forty-third session, resolution 65/22 on UNCITRAL Arbitration Rules as revised in 2010, resolution 65/23 on UNCITRAL Legislative Guide on Secured Transactions: Supplement on Security Rights in Intellectual Property, and resolution 65/24 on Part three of the UNCITRAL Legislative Guide on Insolvency Law.

16. Legal questions dealt with by the Sixth Committee and other related subsidiary bodies of the General Assembly

During the sixty-fifth 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 in 2010.[601] The resolutions of the General Assembly described in this section were all adopted during the sixty-fifth session, on 6 December 2010, on the recommendation of the Sixth Committee.[602]

(*a*) Responsibility of States for internationally wrongful acts

The draft articles on responsibility of States for internationally wrongful acts were prepared by the International Law Commission and were submitted to the General Assembly at its fifty-sixth session in 2001. The Assembly took note of the draft articles and commended them to the attention of Governments without prejudice to the question of their future adoption or other appropriate action.[603] It further considered the item during its fifty-ninth and sixty-second sessions.[604]

(i) *Sixth Committee*

The Sixth Committee considered the item at its 15th, 25th and 27th meetings, on 19 and 29 October and 5 November 2010, respectively.[605]

Pursuant to General Assembly resolution 62/61 of 6 December 2007, the Committee decided, at its 1st meeting, on 4 October 2010, to establish a Working Group on the Responsibility of States for Internationally Wrongful Acts, in order to fulfil the mandate conferred on the Committee by the General Assembly, namely, to further examine the question of

[601] 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/en/ga/sixth/65/65_session.shtml.

[602] The Sixth Committee adopts drafts resolutions, which it recommends for adoption by the General Assembly. These resolutions are contained in the reports of the Sixth Committee to the General Assembly on the various agenda items. The Sixth Committee reports also contain information concerning the relevant documentation on the consideration of the items by the Sixth Committee.

[603] General Assembly resolution 56/83 of 12 December 2001.

[604] See General Assembly resolutions 59/35 of 2 December 2004 and General Assembly resolution 62/61 of 6 December 2007, respectively.

[605] For the summary records of the Sixth Committee, see A/C.6/65/SR/15, 25 and 27.

a convention on the topic or other appropriate action on the basis of the articles drafted by the International Law Commission. At the same meeting, the Committee decided to open the Working Group to all States Members of the United Nations or members of the specialized agencies or of the International Atomic Energy Agency. The Working Group, which was chaired by Mr. Reta Alemu Nega (Ethiopia), held one meeting, on 19 October 2010. At the 25th meeting of the Committee, on 29 October 2010, the Chair of the Working Group presented an oral report on the work of the Working Group.

In their comments, delegations thanked the Secretary-General for his report on the comments and information received from Governments,[606] as well as for the updated compilation of decisions of international courts, tribunals and other bodies referring to the articles on Responsibility of States for internationally wrongful acts.[607] It was noted that the articles on State responsibility had become an authoritative statement of the rules on State responsibility and were being extensively referred to in practice.

Several delegations supported the eventual adoption of the articles as an international convention. It was noted that a convention would contribute to the respect for international law and to peace and stability in international relations. Reference was made to the continuous and positive impact of treaties on the development of international customary law. The view was also expressed that the articles were a well-conceived and balanced set of secondary rules, which had already begun to be consolidated in State practice, the case law of international courts, tribunals and other bodies as well as in national courts' decisions, these instances being a clear indication of the recognition of the articles by the international community. It was also noted that the articles were an indivisible whole and should not be reopened for negotiation. Several delegations further called for a diplomatic conference to adopt the articles as an international convention.

Several other delegations did not favour negotiating a convention at present. The concern was raised that the process of negotiating a convention could risk undermining the work of the International Law Commission, in particular the delicate balance built into the articles, if the resulting convention deviated from important existing rules or did not enjoy widespread acceptance. It was pointed out that the articles in their entirety did not reflect a settled view of customary international law and that there remained elements that were disputed and unclear. It was proposed that the articles should be allowed to guide the continuing development of the customary law of State responsibility. Several delegations expressed the view that the articles were in the strongest position as an annex to a resolution, since the articles reflected a widely shared consensus.

At the 25th meeting, on 29 October 2010, the representative of Ethiopia, on behalf of the Bureau, introduced the text of a draft resolution entitled "Responsibility of States for internationally wrongful acts".[608] At its 27th meeting, on 5 November 2010, the Committee adopted the draft resolution without a vote.

[606] A/65/96 and Add.1.

[607] A/65/76.

[608] A/C.6/65/L.8.

(ii) *General Assembly*

By resolution 65/19, the General Assembly acknowledged the importance of the articles on the responsibility of States for internationally wrongful acts, and commended them once again to the attention of Governments, without prejudice to the question of their future adoption or other appropriate action. The Assembly requested the Secretary-General to invite Governments to submit further written comments on any future action regarding the articles, to update the compilation of decisions of international courts, tribunals and other bodies referring to the articles and to invite Governments to submit information on their practice in this regard. It further requested the Secretary-General to submit this material well in advance of its sixty-eighth session. Finally, the General Assembly decided to further examine, with a view to taking a decision, within the framework of a working group of the Sixth Committee, the question of a convention on responsibility of States for internationally wrongful acts or other appropriate action on the basis of the articles.

(*b*) Criminal accountability of United Nations officials and experts on mission

The item entitled "Comprehensive review of the whole question of peacekeeping operations in all their aspects" was included in the agenda of the General Assembly at its nineteenth session, in February 1965, when the General Assembly established the Special Committee on Peacekeeping Operations that was to undertake a comprehensive review of the whole question of peacekeeping operations in all their aspects.[609]

At its sixty-first session, in 2006, the General Assembly decided that the agenda item entitled "Comprehensive review of the whole question of peacekeeping operations in all their aspects", which had been allocated to the Special Political and Decolonization Committee (Fourth Committee), should also be referred to the Sixth Committee for 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,[610] submitted pursuant to General Assembly resolution 59/300 of 22 June 2005, resolution 60/263 of 6 June 2006 and decision 60/563 of 8 September 2005.[611] 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.[612] The General Assembly further considered the item at its sixty-second, sixty-third and sixty-fourth sessions.[613]

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[609] General Assembly resolution 2006 (XIX) of 18 February 1965.

[610] A/60/980.

[611] General Assembly decision 61/503 A of 13 September 2006.

[612] 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. The *Ad Hoc* Committee held two sessions at United Nations Headquarters in New York, from 9 to 13 April 2007 and from 7 to 9 and on 11 April 2008.

[613] See General Assembly resolutions 62/63 of 6 December 2007, 63/119 of 11 December 2008 and 64/110 of 16 December 2009 respectively.

(i) *Sixth Committee*

The Sixth Committee considered the item at its 6th and 27th meetings, on 8 October and 5 November 2010 respectively.[614] For its consideration of the item, the Committee had before it the report of the Secretary-General on criminal accountability of United Nations officials and experts on mission.[615]

In their general comments, delegations underlined the imperative to guard against impunity and the need to ensure that all United Nations personnel perform their functions in a manner that preserves the image, credibility, impartiality and integrity of the United Nations. In this regard, they reiterated their support for the zero-tolerance policy of the Organization concerning criminal conduct, particularly that involving sexual exploitation and abuse. It was reiterated that any type of criminal misconduct should not go unpunished and that persons responsible for such acts should be held accountable. Some delegations expressed concern that despite the attention drawn to the subject in recent years, there were continuing allegations that tarnished the image of the Organization.

Concerning the establishment of criminal jurisdiction over crimes committed by United Nations officials and experts on mission, it was noted that, according to the information contained in the report of the Secretary-General, although Member States had appropriate legislation on the matter, more needed to be done to ensure criminal accountability. Those States that had not yet done so were encouraged to provide information so that an appropriate assessment could be made of the situation, in particular to close any jurisdictional gaps that might exist.

Delegations also emphasized the importance of strengthening cooperation among States, as well between States and the United Nations, particularly with respect to extradition, mutual assistance (including investigations), exchange of information, collection of evidence, as well as the execution of sentences. Several delegations expressed their appreciation for the assistance offered by the United Nations in the drafting of legislation on issues such as criminalization and mutual assistance. It was also suggested that there was a need to ensure that there was no abuse of the process to waive privileges and immunities.

Delegations highlighted the significance of preventive approaches. In this connection, they stressed the importance of training, and expressed gratitude and support for the Organization's efforts in the pre-deployment and in-mission training of peacekeeping personnel. Delegations also stressed the need to address concerns of victims, including with respect to the provision of compensation. In this regard, they recalled the adoption of the 2007 United Nations Strategy on Assistance and Support to Victims of Sexual Exploitation and Abuse by the United Nations Staff and Related Personnel[616] and its review in 2009.[617] They also underlined the importance of having in place an effective whistle-blower policy.

On the reporting obligations of the Secretary-General under the relevant resolutions, some delegations stressed the importance of receiving more information, including comprehensive statistics about substantiated allegations. Some delegations called upon States

[614] For the summary records of the Sixth Committee, see A/C.6/65/SR/6 and 27.

[615] A/65/185.

[616] General Assembly resolution 62/214 of 21 December 2007.

[617] A/64/176.

to report efforts taken to investigate and, where appropriate, prosecute their nationals for having committed crimes of a serious nature while serving as United Nations officials or experts on mission.

With regard to future follow-up action, delegations expressed different views. Some delegations expressed support for the proposal relating to the negotiation of an international convention requiring parties to exercise criminal jurisdiction over nationals who participate in United Nations operations abroad. Some other delegations were of the view that it was premature to discuss a draft convention. It was suggested that more practical ways of addressing the concerns be developed. In this regard, some delegations called for the implementation of the amended draft model Memorandum of Understanding.[618] A call was made for greater coordination with the work of the Special Committee on Peacekeeping Operations.

At the 27th meeting, on 5 November 2010, the representative of Greece introduced, on behalf of the Bureau, a draft resolution entitled "Criminal accountability of United Nations officials and experts on mission".[619] At the same meeting, the Committee adopted the draft resolution without a vote.

(i) *General Assembly*

By resolution 65/20, 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; and to consider establishing to the extent that they have not yet done so jurisdiction, particularly over crimes of a serious nature, as known in their existing domestic criminal laws, committed by their nationals while serving as United Nations officials or experts on mission, 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 Assembly encouraged all States, *inter alia*, to cooperate with each other and with the United Nations in the exchange of information and in facilitating the conduct of investigations and, as appropriate, the prosecution of United Nations officials and experts on mission who are alleged to have committed crimes of a serious nature, in accordance with their domestic laws and applicable United Nations rules and regulations, fully respecting due process rights, as well as to consider strengthening the capacities of their national authorities to investigate and prosecute such crimes; to afford each other assistance in connection with criminal investigations or criminal or extradition proceedings in respect of such crimes; in accordance with their domestic law, to explore ways and means of facilitating the possible use of information and material obtained from the United Nations for purposes of criminal proceedings initiated in their territory; in accordance with their domestic law, to provide effective protection for victims of, witnesses to, and others who provide information in relation to such crimes and to facilitate access by victims to victim assistance programmes, without prejudice to the rights of the alleged offender, including

[618] See A/61/19 and General Assembly resolution 61/291 of 24 July 2007.

[619] A/C.6/65/L.3.

those relating to due process; and, in accordance with their domestic law, to explore ways and means of responding adequately to requests by host States for support and assistance in order to enhance their capacity to conduct effective investigations in respect of crimes.

Furthermore, the Assembly urged the Secretary-General 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.

(*c*) 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,[620] 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 of Assistance at its annual sessions until its twenty-sixth session, and thereafter biennially.[621]

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 18th, 27th and 28th meetings, on 22 October and on 5 and 11 November 2010.[622]

In their general comments, delegations expressed their strong support for the Programme of Assistance in the teaching, study, dissemination and wider appreciation of international law. Delegations emphasized that the goal of the Programme of Assistance remains just as essential today as it was at the time of its establishment forty-five years ago: to contribute to a better knowledge of international law as a means of strengthening international peace and security and to promote friendly relations and co-operation among States. Delegations highlighted the importance of the Programme of Assistance as a key tool in the strengthening of the rule of law at the national and international levels.

Delegations welcomed the report of the Secretary-General concerning the implementation of the Programme of Assistance in 2010,[623] and in particular commended the Codification Division of the Office of Legal Affairs for its efforts in strengthening and revitalizing the various activities under the Programme of Assistance in order to meet the increasing

[620] General Assembly resolution 2099 (XX) of 20 December 1965.

[621] For further information on the Programme of Assistance, see http://www.un.org/law/programmeofassistance.

[622] For summary records of the Sixth Committee, see A/C.6/65/SR.18, 27 and 28.

[623] A/65/514.

demand for international law training and dissemination in developing countries, as well as developed countries.

Several delegations commended the Codification Division for its cost-saving measures that resulted in an increased number of fellowships for the International Law Fellowship Programme. Some delegations noted with deep concern that in previous years, due to increased costs and significant budget cuts, the number of fellowships had declined. In this context, they recalled General Assembly resolutions 62/62 of 6 December 2007 and 64/113 of 16 December 2009, in which the Assembly requested that necessary resources be provided under the programme budget with a view to ensuring the effectiveness of the Programme of Assistance.

The establishment and continuous expansion of the United Nations Audiovisual Library of International Law was welcomed as a significant achievement by several delegations and it was noted that the Audiovisual Library had become an important resource for international law training and research for the legal community. A number of delegations also noted that the Audiovisual Library had been accessed in 191 Member States and welcomed the 2009 Best Website award conferred on the Audiovisual Library by the Association of International Law Libraries.

Delegations expressed the view that regional courses were an important mechanism for the study of subjects of particular interest to developing countries in a given region. Several delegations welcomed the hosting of regional courses by the Republic of Korea in 2010 and by Ethiopia in 2011. They expressed the hope that the regional courses would be organized on a regular basis. A number of delegations expressed regret that no such courses had been held since 2005 due to insufficient funding for fellowships.

Regarding the Hamilton Shirley Amerasinghe Memorial Fellowship on the Law of the Sea, some delegations expressed concern that the Amerasinghe Fellowship had not been granted in 2007, 2008 and 2009 due to lack of resources in its trust fund. The decision of the Legal Counsel to provide—on an *ad hoc* basis—financial support from the trust fund for the dissemination of international law was commended

Several delegations expressed appreciation for the achievements of the Codification Division with respect to its desktop publishing programme and online publications. The reduction of publication backlogs was also welcomed and some delegations commended the Codification Division for the timely publication of the 2009 *United Nations Juridical Yearbook*, thereby eliminating the previous backlog. In this context, the view was expressed that adequate resources within the budget of the Organization should be allocated to the Codification Division to continue this programme. Some delegations also emphasized the continuing importance of publishing hard copies of publications for the benefit of lawyers and other persons in developing countries.

With regard to technical assistance, the Treaty Section of the Office of Legal Affairs was commended for the organization of its annual Treaty Events and seminars on International Treaty Law and Practice.

While several delegations commended those States that had made voluntary contributions to the Programme of Assistance and encouraged others to consider such contributions in the future, it was noted that progress on the Programme of Assistance was being hindered by its dependence on voluntary sources of funding. Some delegations expressed the view that the Programme of Assistance should be regarded as a core activity of the

United Nations in the promotion of international law for the benefit of all States, developing or developed, and that it was crucial to ensure that the Programme of Assistance had adequate resources within overall existing resources to continue to meet the needs of the international community. The view was expressed by a number of delegations that the Programme of Assistance should receive adequate resources to continue and expand, in order to meet the growing need for international law training and research materials. In this context, several delegations emphasized that to be sustainable, the Programme of Assistance must be adequately resourced from the regular budget. The point was made urging the Sixth Committee to work with the Fifth Committee in order to ensure that adequate resources were allocated to the Programme of Assistance in accordance with operative paragraph 6 of General Assembly resolutions 62/62 and 64/113 on this agenda item.

At the 27th meeting, on 5 November 2010, 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", which was orally revised and subsequently adopted by the Committee, without a vote, at its 28th meeting on 11 November 2010.[624]

(ii) *General Assembly*

By resolution 62/25, the General Assembly, reaffirming that the Programme of Assistance constitutes a core activity of the United Nations, commended the efforts of the Codification Division of the Office of Legal Affairs to revitalize the Programme of Assistance to better respond to the needs of the international community, particularly with regard to the International Law Fellowship Programme, the regional courses in international law and the Audiovisual Library of International Law. It expressed appreciation to the Republic of Korea and the Federal Democratic Republic of Ethiopia for hosting regional courses in international law in Seoul in 2010 and in Addis Ababa in 2011. The General Assembly reiterated its authorization for the Secretary-General to carry out these activities in 2011; expressed concern over the reduction in the programme budget for fellowships; and further requested the Secretary-General to provide the necessary resources to the programme budget in 2011 as well as for the next and future biennia to ensure the Programme of Assistance's continued effectiveness and further development, in particular with regard to the regional courses in international law and the Audiovisual Library of International Law.

(*d*) Diplomatic protection

At its sixty-first session, the General Assembly took note of the draft articles on diplomatic protection adopted by the International Law Commission at its fifty-eighth session, in 2006, and invited Governments to submit comments concerning the recommendation of the Commission that the Assembly elaborate a convention on the basis of the draft articles.[625] The Assembly further considered this item at its sixty-second session.[626]

[624] A/C.6/65/L.16.

[625] General Assembly resolution 61/35 of 4 December 2006.

[626] See General Assembly resolution 62/67 of 6 December 2007.

(i) *Sixth Committee*

The Sixth Committee considered the item at its 16th and 27th meetings, on 20 October and 5 November 2010, respectively.[627]

Pursuant to resolution 62/67, the Committee decided, at its first meeting, on 4 October 2010, to establish a Working Group on Diplomatic Protection, in order to fulfil the mandate conferred by the General Assembly on the Committee, namely, to further examine, in the light of the written comments of Governments as well as views expressed in the debates held at the sixty-second session of the General Assembly, the question of a convention on diplomatic protection, or any other appropriate action, on the basis of the articles drafted by the International Law Commission. At the same meeting, the Committee decided to open the Working Group to all States Members of the United Nations or Members of the specialized agencies or of the International Atomic Energy Agency. The Working Group, which was chaired by Ms. Eva Šurková (Slovakia), held one meeting, on 20 October 2010. At the 27th meeting of the Sixth Committee, on 5 November 2010, the Chair of the Working Group presented an oral report on the work of the Working Group.

Several delegations expressed support for the adoption of the articles on diplomatic protection in the form of a convention. It was noted that a convention on diplomatic protection would enable the harmonization of State practice and jurisprudence on this topic as well as enhance the rule of law at all levels and contribute to the peaceful settlement of disputes. The view was expressed that while it might be advantageous to adopt the articles in the same form as the articles on the responsibility of States for internationally wrongful acts of 2001, it was feasible to adopt different approaches and timings in terms of the final form of the two sets of articles. It was also proposed that a working group of the Sixth Committee be established to consider the articles on diplomatic protection.

Several other delegations preferred to allow more time for reflection and for the evolution of State practice on the basis of the articles. Delegations considered that the fate of the articles on diplomatic protection was closely bound up with that of the articles on the responsibility of States for internationally wrongful acts. In the absence of consensus on the elaboration of a convention on the basis of the articles on the Responsibility of States for internationally wrongful acts, it would be premature to commence negotiations on a convention based on the International Law Commission's articles on diplomatic protection. It was proposed that at this stage the articles should be annexed to a General Assembly resolution. The view was also expressed that the General Assembly should take no further action on the articles.

At the 27th meeting, on 5 November, the representative of Slovakia, on behalf of the Bureau, introduced a draft resolution entitled "Diplomatic protection".[628] At the same meeting, the Committee adopted the draft resolution without a vote.

(ii) *General Assembly*

By resolution 65/27, the General Assembly commended once again the articles on diplomatic protection, which were annexed to the resolution, to the attention of Governments

[627] For the summary records of the Sixth Committee, see A/C.6/65/SR/16 and 27.

[628] A/C.6/65/L.9.

and invited them to submit in writing to the Secretary-General any further comments, including comments concerning the recommendation by the International Law Commission to elaborate a convention on the basis of the articles.

(*e*) Consideration of prevention of transboundary harm from hazardous activities and allocation of loss in the case of such harm

Following a recommendation by the General Assembly in resolution 3071 (XXVIII) of 30 November 1973 that the International Law Commission should undertake at an appropriate time a separate study of the topic "International liability for injurious consequences arising out of the performance of other activities", other than acts giving rise to responsibility for internationally wrongful acts, the topic "International liability for injurious consequences arising out of acts not prohibited by international law" was included in the programme of work of the Commission in 1978.

In 1997, the Commission decided to deal first with prevention aspects of the topic under the subtitle "Prevention of transboundary damage from hazardous activities". The Commission, at its fifty-third session, in 2001, completed the draft articles on prevention of transboundary harm from hazardous activities and recommended to the General Assembly the elaboration of a convention on the basis of the draft articles.[629]

In 2002, at its fifty-fourth session, the Commission resumed work on the liability aspects of the topic under the subtitle "International liability in case of loss from transboundary harm arising out of hazardous activities".[630] At its fifty-eighth session, in 2006, the Commission completed the liability aspects by adopting draft principles on the allocation of loss in the case of transboundary harm arising out of hazardous activities,[631] and recommended to the Assembly that it endorse the draft principles by a resolution and urge States to take national and international action to implement them.[632] The General Assembly further considered this item at its sixty-second session.[633]

(i) *Sixth Committee*

The Sixth Committee considered the item at its 17th and 27th meetings, on 21 October and 5 November 2010.[634]

In their comments, delegations welcomed the adoption of resolution 61/36, to which are annexed the principles on allocation of loss in the case of transboundary harm arising out of hazardous activities, and resolution 62/38, to which are annexed the articles on prevention of such harm. It was observed that the work of the International Law Commission

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[629] See *Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 10* (A/56/10 and Corr.1).

[630] See General Assembly resolution 56/82 of 12 December 2001 and *Official Records of the General Assembly, Fifty-seventh Session, Supplement No. 10* (A/57/10 and Corr.1).

[631] See *Official Records of the General Assembly, Sixty-first Session, Supplement No. 10* (A/61/10).

[632] General Assembly resolution 61/36 of 19 December 2006.

[633] General Assembly resolution 62/68 of 6 December 2007.

[634] For the summary records of the Sixth Committee, see A/C.6/65/SR/17 and 27.

in the area was an important contribution to the progressive development of international law and its codification. Delegations noted that the articles and the principles already constituted authoritative guidance for States and judicial bodies. States were encouraged to be guided by the articles and the principles when negotiating agreements, as well as in taking domestic measures.

While some delegations made comments on the substance of the articles and the principles, the main focus in the interventions was on the form that the articles and the principles should take, bearing in mind the recommendations of the International Law Commission that the General Assembly adopt an international convention on the basis of the articles on prevention, and that the principles be endorsed in a resolution.

Some delegations stated that there was no added value in attempting to transform the articles and principles into a convention without broad support from Member States, with some noting that they supported retaining the principles and the articles in their current form. Some other delegations observed that there was no need for a convention on the prevention of transboundary harm or allocation of loss, while others agreed to proceed on the basis of the recommendations of the Commission.

Some delegations did express support for the adoption of the articles in the form of a convention, however, noting in some instances that there was a need to have a unified draft covering both the prevention and the liability aspects. Without ruling out the possibility of adopting a convention, other delegations noted that it was premature to adopt such a convention, and for the time being the adoption of a declaration was preferred. Given that the articles and principles contained elements of progressive development of international law, some other delegations stated that the focus should be on monitoring developments in State practice. When the conditions were ripe, the possibility of formulating international conventions on the basis of the articles and principles could be revisited. Other delegations noted that it was necessary to examine the application of the articles at the bilateral and regional levels before the articles are adopted in any convention, while also recommending a review of decisions on the application of the principles before taking future action on them. Some delegations preferred to postpone a decision on the principles while expressing willingness to adopt a convention on the articles, on the basis of State practice, in the framework of a working group of the Sixth Committee. It was suggested that such a working group could take into account new developments and seek to harmonize the texts into one single instrument. It was further suggested that the Secretariat carry out a comprehensive analytical study on the subject.

At the 27th meeting, on 5 November 2010, the representative of the Republic of Korea, on behalf of the Bureau, introduced a draft resolution entitled "Consideration of prevention of transboundary harm from hazardous activities and allocation of loss in the case of such harm".[635] At the same meeting, the Sixth Committee adopted the draft resolution without a vote.

[635] A/C.6/65/L.13.

(ii) *General Assembly*

By resolution 65/28, the Assembly commended once again to the attention of Governments the articles on prevention of transboundary harm from hazardous activities and the principles on the allocation of loss in the case of transboundary harm arising out of hazardous activities. It invited Governments to submit further comments on any future action, in particular on the form of the respective articles and principles, bearing in mind the recommendations made by the Commission in that regard, including in relation to the elaboration of a convention on the basis of the draft articles, as well as on any practice in relation to the application of the articles and principles. It also requested the Secretary-General to submit a compilation of decisions of international courts, tribunals and other bodies referring to the articles and the principles.

(*f*) Status of the Protocols Additional to the Geneva Conventions of 1949 and relating to the protection of victims of armed conflicts

This item was included on the agenda of the thirty-seventh session of the General Assembly, in 1982, at the request of Denmark, Finland, Norway and Sweden.[636] The General Assembly considered the question biennially from its thirty-seventh to its sixty-third sessions.

(i) *Sixth Committee*

The Sixth Committee considered the item at its 12th, 13th and 27th meetings, on 15 and 18 October and 5 November 2010.[637]

Delegations recalled the importance of the 1949 Geneva Conventions[638] and the 1977 Protocols Additional thereto[639] and stressed the need for those States that had not already done so to ratify the Protocols as well as to accede to other relevant instruments. Some delegations encouraged States to accept the competence of the International Fact-Finding Commission, pursuant to Article 90 of the First Additional Protocol. The need to fully utilize the potential of the Commission was stressed. A reference was made to the Security Council resolution 1894 (2009) of 11 November 2009, concerning the possibility of making use of the Commission with regard to gathering information on alleged violations of applicable international law relating to the protection of civilians.

Some speakers welcomed the extension of the jurisdiction of the International Criminal Court (ICC) over certain war crimes achieved at the ICC Rome Statute Review Conference in Kampala in 2010. Some delegations welcomed the entry into force in 2010 of the Convention on Cluster Munitions.[640] Delegations commended the International Committee of the Red Cross (ICRC) on its role in the promotion of international humanitarian law and in the monitoring of compliance with it. Some delegations welcomed the ICRC's updated

[636] Letter dated 6 July 1982 from Denmark, Finland, Norway and Sweden (A/37/142).

[637] For the summary records of the Sixth Committee, see A/C.6/65/SR/12, 13 and 27.

[638] United Nations, *Treaty Series*, vol. 75, p. 31, 85, 135 and 287.

[639] *Ibid*., vol. 1125, p. 3 and 609.

[640] Depositary notification C.N.776.2008.TREATIES-2 of 10 November 2008.

database on customary international humanitarian law. However, some speakers stressed the need to address possible legal gaps relating to non-international armed conflicts. Some speakers welcomed the 2008 Montreux Document[641] elaborated under the leadership of Switzerland and the ICRC to clarify legal obligations and to define good practices relevant to private military and security companies operating in an armed conflict.

Concern was expressed over the increasing numbers of civilians being targeted in armed conflicts and the need to implement international humanitarian law was emphasized. Some delegations viewed certain acts of a State, *inter alia*, affecting the population of occupied territories, as instances of violations of international humanitarian law, in disregard of the findings and decisions of relevant United Nations bodies. A representative of that State, however, highlighted the commitment of that State to international humanitarian law and considered the abovementioned views unfounded allegations.

At the 27th meeting, on 5 November 2010, the representative of Sweden, on behalf of a large number of States, introduced a draft resolution entitled "Status of the Protocols Additional to the Geneva Conventions of 1949 and relating to the protection of victims of armed conflicts".[642] At the same meeting, the Committee adopted the draft resolution without a vote.

(ii) *General Assembly*

By resolution 65/29, the General Assembly welcomed the universal acceptance of the Geneva Conventions of 1949 and noted the trend towards a similarly wide acceptance of the two Additional Protocols of 1977. It called upon all States to become parties to and implement these and other relevant conventions. The Assembly requested the Secretary-General to submit to the Assembly at its sixty-seventh session a report on the status of the 1977 Additional Protocols relating to the protection of victims of armed conflicts, as well as on measures taken to strengthen the existing body of international humanitarian law, *inter alia*, with respect to its dissemination and full implementation at the national level, based on information received from Member States and the ICRC. The General Assembly also encouraged Member States and the ICRC to focus their information to the Secretary-General on new developments and activities during the reporting period; and further encouraged Member States to explore ways of facilitating the submission of information to future reports of the Secretary-General, and in this context, to consider the convenience of drawing up guidelines or a questionnaire by Member States, where necessary with the assistance of the ICRC upon the request of Member States, and, as appropriate, in consultation with the Secretariat.

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[641] ICRC, Montreux Document on pertinent international legal obligations and good practices for States related to operations of private military and security companies during armed conflict, available from http://www.icrc.org/eng/assets/files/other/icrc_002_0996.pdf.

[642] A/C.6/65/L.15.

(*g*) Consideration of effective measures to enhance the protection, security and safety of diplomatic and consular missions and representatives

This item was included in the agenda of the thirty-fifth session of the General Assembly, in 1980, at the request of Denmark, Finland, Iceland, Norway and Sweden.[643] The General Assembly considered the item annually from its thirty-sixth to its forty-third sessions, and biennially thereafter.

(i) *Sixth Committee*

The Sixth Committee considered the item at its 13th and 27th meetings, on 18 October and 5 November 2010.[644]

Delegations welcomed the Secretary-General's report on the topic.[645] They condemned the continuing acts of violence against the security and safety of diplomatic and consular missions and their representatives and urged States to respect their obligations under international law and to take all the necessary measures in order to protect the diplomatic and consular missions and the representatives within their territories. Some delegations urged States to comply with relevant reporting procedures. Some speakers also stressed that the breaches by the States of the obligations under the Vienna Conventions on Diplomatic and Consular Relations[646] entail an obligation to make reparation or to take other remedial action. The need and responsibility to take preventive measures was emphasized by some delegations. Some speakers welcomed the progress in the participation of States in relevant instruments and stressed the need for those States that have not already done so to become parties to these instruments.

At the 27th meeting, on 5 November 2010, the representative of Finland, on behalf of a large number of States, introduced a draft resolution entitled "Consideration of effective measures to enhance the protection, security and safety of diplomatic and consular missions and representatives".[647] At the same meeting, the Committee adopted the draft resolution without a vote.

(ii) *General Assembly*

By resolution 65/30, the General Assembly strongly condemned acts of violence against diplomatic and consular missions and representatives, as well as against missions and representatives of international intergovernmental organizations and officials of such organizations, and emphasized that such acts can never be justified. The Assembly requested the Secretary-General to submit to it at its sixty-seventh session a report containing information on the state of ratification of and accessions to the instruments relevant to

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[643] See Letter dated 11 June from Denmark, Finland, Iceland, Norway and Sweden requesting inclusion on the agenda an item entitled "Consideration of effective measures to enhance the protection, security and safety of diplomatic and consular missions and representatives".

[644] For the summary records of the Sixth Committee, see A/C.6/65/SR/13 and 27.

[645] A/65/112 and Add.1.

[646] United Nations, *Treaty Series*, vol. 500, p. 95 and vol. 596, p. 261, respectively.

[647] A/C.6/65/L.14.

the protection, security and safety of diplomatic and consular missions and representatives; and a summary of the reports received from States on serious violations involving diplomatic and consular missions and representatives and actions taken against offenders, as well as of the views of States with respect to any measures needed to enhance the protection, security and safety of diplomatic and consular missions and representatives. The General Assembly urged States to report to the Secretary-General in a concise and expeditious manner and in accordance with the guidelines prepared by the Secretary-General, serious violations of the protection, security and safety of diplomatic and consular missions and representatives as well as missions and representatives with diplomatic status to international intergovernmental organizations.

(*h*) Report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization

(i) *Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization*

At its twenty-ninth session, in 1974, the General Assembly decided to establish the *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.[648] At its thirtieth session, the General Assembly decided to reconvene the *Ad Hoc* Committee as the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization, to examine suggestions and proposals regarding the Charter and the strengthening of the role of the United Nations with regard to the maintenance and consolidation of international peace and security, the development of cooperation among all nations and the promotion of the rules of international law.[649] Since its thirtieth session, the General Assembly has reconvened the Special Committee every year.

The Special Committee met at United Nations Headquarters from 1 to 9 March 2010. The issues considered by the Special Committee during its 2010 session were: maintenance of international peace and security; the implementation of the provisions of the Charter relating to assistance to third States affected by the application of sanctions; the revised working paper submitted by the Libyan Arab Jamahiriya on the strengthening of certain principles concerning the impact and the application of sanctions; consideration of the further revised working paper submitted by Cuba at the 2009 session of the Special Committee, entitled "Strengthening of the role of the Organization and enhancing its effectiveness"; consideration of the revised proposal submitted by the Libyan Arab Jamahiriya with a view to strengthening the role of the United Nations in the maintenance of international peace and security; consideration of the revised working paper submitted by Belarus and the Russian Federation; the peaceful settlement of disputes; the Repertory of Practice of United Nations Organs and Repertoire of the Practice of the Security Council; and the working methods of the Special Committee and identification of new subjects.

[648] General Assembly resolution 3349 (XXIX) of 17 December 1974.

[649] General Assembly resolution 3499 (XXX) of 15 December 1975.

(ii) *Sixth Committee*

The Sixth Committee considered the item at its 13th, 14th, 27th and 28th meetings, on 18 October and on 5 and 11 November 2010 respectively.[650]

The Chairman of the 2010 session 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 at the 13th meeting, held on 18 October 2010.[651] The Director of the Codification Division, Office of Legal Affairs, made a statement on the status of the Repertory of Practice of United Nations Organs. The Chief of the Security Council Practices and Charter Research Branch, Department of Political Affairs, made a statement on the status of the Repertoire of the Practice of the Security Council.

Several delegations emphasized the importance of the Special Committee in examining the legal aspects of the reform process of the United Nations. Some delegations underscored that the Security Council bears the primary but not exclusive responsibility for the maintenance of international peace and security. In this context, the view was expressed that the role of the General Assembly as the deliberative, policy-making and representative organ of the United Nations should be strengthened. Some delegations voiced their concern over the continuing encroachment by the Security Council on the functions and powers of the General Assembly and on those of the Economic and Social Council, through addressing issues which fall within the competence of the latter organs.

With regard to sanctions, while the view was expressed that sanctions are an important tool for the maintenance and restoration of international peace and security, several delegations reiterated their view that they should be used only in last resort and after all peaceful means for the settlement of disputes have been exhausted. It was also stated that sanctions should be clearly defined and only be imposed when there exists an actual threat to the peace or an act of aggression. The view was also expressed that sanctions should not be imposed in a preventive manner, aimed at punishment, or utilized to realize political gains. Several delegations also stated that the imposition of sanctions should have a specified time frame and sanctions should be lifted as soon as their objectives are achieved. It was suggested that sanctions should be subject to periodic reviews, that sanctions should be in support of legitimate objectives, and that the Security Council should be accountable for consequences of sanctions imposed for unlawful objectives. It was suggested that the International Law Commission should be requested to give due consideration to the legal consequences of arbitrarily imposed sanctions against Member States by the Security Council, under the topic "Responsibility of International Organizations". It was further stated that States should be compensated for damages inflicted upon them by unlawful sanctions and a compensation regime should be established in this regard. Another view held that it was inappropriate for the Special Committee to devise norms concerning the design and implementation of sanctions.

With regard to the negative effects of sanctions on third States, several delegations welcomed the fact that, due to the shift from comprehensive economic sanctions to targeted sanctions, no Security Council sanctions committees were approached by Member States with regard to special economic problems arising from the implementation of sanc-

[650] For the summary records of the Sixth Committee, see A/C.6/65/SR/13, 14, 27 and 28.

[651] *Official Records of the General Assembly, Sixty-fifth Session, Supplement No. 33* (A/65/33).

tions. The view was also expressed that the question of assistance to third States affected by sanctions was no longer relevant to the Special Committee and could be removed from its agenda.

Several delegations reaffirmed the essential part the peaceful settlement of disputes played in the maintenance of international peace and security. The important role of the International Court of Justice as the principal judicial organ of the Organization and the importance of free choice of means in peaceful dispute settlement were also emphasized. While several delegations expressed their support for the proposal submitted by Belarus and the Russian Federation to request an advisory opinion from the International Court of Justice on the legal consequences of the resort to the use of force by States without prior authorization by the Security Council except in the exercise of the right of self defence, a divergent view was expressed.

Regarding the working methods of the Special Committee, several delegations expressed concern over the efficiency of the work of the Special Committee. It was proposed that the duration of the Special Committee's sessions be reduced in order to reflect the realities of the debate on the topics under consideration. Caution was also advised regarding the inclusion of new items on the Committee's agenda, as well as needlessly duplicating work being undertaken in other United Nations fora. The view was also expressed that the Special Committee should not pursue activities concerning international peace and security, which would be inconsistent with the roles of the principal organs of the United Nations as set forth in the Charter of the United Nations.

The view was expressed that it was important to improve coordination and cooperation between the United Nations and regional organizations and arrangements. It was suggested that the United Nations could not only propose how to strengthen its cooperation with regional organizations and arrangements, but it could also call on these organizations and arrangements to consider ways and means of enhancing their contributions.

The Secretariat was commended for its efforts to eliminate the backlog in the preparation of the Repertory of Practice of United Nations Organs and the progress achieved in this area. It was observed that the Repertory and the Repertoire contributed to the institutional memory of the Organization and were important research tools for the international community, particularly the diplomatic community and academia. Following a query, the Secretariat made a statement regarding volume III of Supplements Nos. 7 to 10 of the Repertory.

At the 27th meeting, on 5 November 2010, 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".[652] At the 28th meeting, on 11 November 2010, the Secretary of the Committee made a statement regarding the financial implications of the draft resolution. At the same meeting, the Committee adopted the draft resolution without a vote.

[652] A/C.6/65/L.12.

(iii) *General Assembly*

By resolution 65/31, the General Assembly, decided that the Special Committee would meet from 28 February to 4 March and 7 and 9 March 2011, to continue its consideration of all proposals concerning the question of the maintenance of international peace and security and to continue to consider, on a priority basis, the question of the implementation of the provisions of the Charter of the United Nations related to assistance to third States affected by the application of sanctions, and ways and means of improving the Committee's working methods and enhancing its efficiency. It also requested the Secretary-General to submit to the General Assembly, at its sixty-sixth session, a report on both the Repertory and the Repertoire; to brief the Special Committee at its next session on the information referred to in paragraph 11 of his report on the implementation of the provisions of the Charter related to assistance to third States affected by the application of sanctions;[653] and to submit to the General Assembly, at its sixty-sixth session, under the item entitled "Report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization", a report on the implementation of the provisions of the Charter related to assistance to third States affected by the application of sanctions.

(*i*) 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.[654] The General Assembly considered the item from its sixty-first to its sixty-third sessions.

(i) *Sixth Committee*

The Sixth Committee considered the item at its 8th, 9th, 10th, 12th and 28th meetings, on 12, 13, and 15 October and on 11 November 2010.[655] During the 8th meeting, the Deputy Secretary-General made a statement introducing the report of the Secretary-General on Strengthening and coordinating United Nations rule of law activities.[656]

In their general observations, many delegations reaffirmed their commitment to uphold and develop an international order based on the rule of law and international law. In this respect, they stressed that the purposes and principles of the Charter of the United Nations and the principles of international law are paramount to peace and security, the rule of law, the advancement of socioeconomic development and human rights. It was pointed out that the principles enshrined in the Charter provide normative guidance as to the basis of the rule of law at the international level. The view was expressed that the Organization should pay greater attention to the rule of law at the international level. Some delegations expressed concern regarding the negative impact of the resort to unilateral

[653] A/65/217.

[654] 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).

[655] For the summary records of the Sixth Committee, see A/C.6/65/SR/8, 9, 10, 12 and 28.

[656] A/65/318.

measures on the rule of law at the international level. Several delegations further noted the intrinsic relationship between the rule of law at the national and international levels, insisting on the need to maintain a balance in developing both aspects. They reaffirmed the conviction that human rights, the rule of law and democracy are interlinked and mutually reinforcing.

Delegations generally expressed their appreciation for the second annual report of the Secretary-General. A number of delegations expressed regret for the late release of the report. With reference to the rule of law within the United Nations, delegations underlined the need to reform the United Nations system, balancing the powers and responsibilities of the General Assembly and the Security Council.

Delegations emphasized the importance of the peaceful settlement of disputes under international law, highlighting the central role of the International Court of Justice. Delegations also referred to the role of other tribunals, specialized in particular branches of international law, such as the International Tribunal on the Law of the Sea. Delegations attached great importance to the strengthening of international criminal justice and the fight against impunity. The essential role of the International Criminal Court in this regard was noted by some delegations. Some delegations noted the new momentum that the Review Conference of the Rome Statute had brought to efforts to strengthen domestic criminal justice, in line with the principle of complementarity.

With regard to the subtopic "Laws and practices of Member States in implementing international law", some delegations underlined the importance of full domestic implementation of international obligations for the rule of law at the international level. Many delegations described their national practices with regard to the implementation of international law in their respective domestic legal systems. Several delegations made reference to the role of regional cooperation and coordination to strengthen the rule of law.

With regard to the role of the United Nations in promoting the rule of law, delegations underlined the importance of strengthening national capacities of States in domestic implementation of international obligations through enhanced technical assistance and capacity building. Many delegations noted that these activities should be undertaken only at the request of the respective States and in full respect of the specificities of each country's culture.

Delegations endorsed the idea of convening a high-level meeting of the General Assembly on the rule of law in 2011, as suggested in the Joint Strategic Plan for 2009–2011 of the Rule of Law Coordination and Resource Group, to reiterate States' commitment to the rule of law at the national and international levels.

At the 28th meeting, on 11 November 2010, the representative of Mexico, on behalf of the Bureau, introduced a draft resolution entitled "The rule of law at the national and international levels".[657] The Secretary of the Committee made a statement regarding the financial implications of the draft resolution and the Committee adopted it without a vote.

[657] A/C.6/65/L.17.

(ii) *General Assembly*

By resolution 65/32, the General Assembly called for dialogue among all stakeholders to be enhanced, with a view to placing national perspectives at the centre of rule of law assistance in order to strengthen national ownership; requested the Secretary-General to submit, in a timely manner, his next annual report on United Nations rule of law activities; and decided to convene a high-level meeting of the General Assembly on the rule of law at the national and international levels during the high-level segment of its sixty-seventh session, the modalities of which would be finalized during the sixty-sixth session. The Assembly also invited Member States to focus their comments in the upcoming Sixth Committee debate on the sub-topic "rule of law and transitional justice in conflict and post-conflict situations", without prejudice to the consideration of the item as a whole, and invited the Secretary-General to provide information on this sub-topic in his report, after seeking the views of Member States.

(*j*) The scope and application of the principle of universal jurisdiction

The item entitled "The scope and application of the principle of universal jurisdiction" was included in the provisional agenda of the sixty-fifth session of the General Assembly pursuant to Assembly resolution 64/117 of 16 December 2009.

(i) *Sixth Committee*

The Sixth Committee considered the item at its 10th, 11th, 12th, 27th and 28th meetings, on 13 and 15 October, as well as on 5 and 11 November 2010 respectively.[658] For its consideration of the item, the Committee had before it the report of the Secretary-General on the scope and application of the principle of universal jurisdiction. [659]

In their general observations, delegations affirmed that the principle of universal jurisdiction was enshrined in international law. Delegations reaffirmed their commitment to the fight against impunity for heinous crimes and underscored the relevance of universal jurisdiction in that regard. Nonetheless, it was observed that the principle was still incipient and that there was insufficient legal clarity regarding its scope and application. Concern was expressed over the abuse of the principle, given its vague definition. Some delegations expressed the view that universal jurisdiction constituted an exception of a subsidiary character to the regular bases of jurisdiction, and was to be asserted as a last resort, namely after all other relevant venues had been pursued.

With respect to the scope of universal jurisdiction, delegations expressed divergent opinions. Some delegations emphasized that there was no clarity or consensus on the scope of crimes covered by the principle beyond piracy, while some other delegations included genocide, war crimes, torture and crimes against humanity within the scope of crimes encompassed by universal jurisdiction. The view was also expressed that the material scope of universal jurisdiction was in fact under constant development and it was questioned whether it

[658] For the summary records of the Sixth Committee, see A/C.6/65/SR/10, 11, 12, 27 and 28.

[659] A/65/181.

was advisable to reach a consensus on a list of crimes. Some delegations cautioned against any unwarranted expansion of the crimes covered under universal jurisdiction.

Several delegations also pointed out that while the principle of universal jurisdiction was in some ways related to other aspects of international law, such as the obligation to extradite or prosecute (*aut dedere aut judicare*), the question of immunity of State officials, other forms of extraterritorial jurisdiction, the exercise of jurisdiction by international tribunals and methods to solve conflicts of jurisdiction, these must be clearly distinguished from the item under consideration.

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 sovereign equality of States and immunity of State officials, as well as in accordance with the rule of law. Delegations also pointed to the need to avoid the abuse of the principle in practice. States were called upon to ensure that they have proper national legal framework in place for the exercise of universal jurisdiction. Several delegations described their laws and practices relevant to universal jurisdiction.

As to the future work on this topic, delegations noted that further clarification was needed to prevent any misapplication or improper resort to the principle. A universally acceptable definition of universal jurisdiction and a shared understanding of its application were called for by some delegations, while some other delegations stated that the focus should be on procedural and organizational recommendations. The potential negotiation of uniform standards at the international level through an international treaty was also suggested. Several delegations suggested the establishment of a working group of the Sixth Committee and the preparation of a study by the Secretariat to assist in this effort. Delegations called for the issuance of a new report by the Secretary-General and urged States that had not already done so to submit their comments in compliance with General Assembly resolution 64/117.

Some delegations suggested that the item be considered by the International Law Commission, since it was already considering the related topics, namely: "The obligation to extradite or prosecute (*aut dedere aut judicare*)" and "Immunity of State officials from foreign criminal jurisdiction". Moreover, the topic "Extraterritorial jurisdiction" was on the long-term programme of the Commission. However, the point was made that the debate should first be exhausted at the Sixth Committee level before moving it elsewhere.

At the 27th meeting, on 5 November 2010, the representative of Ghana introduced the draft resolution, entitled "The scope and application of the principle of universal jurisdiction", on behalf of the Bureau.[660] At its 28th meeting, on 11 November 2010, the Committee adopted the draft resolution without a vote.

(ii) *General Assembly*

By resolution 65/33, the General Assembly decided that the Sixth Committee shall continue its consideration of the item, without prejudice to the consideration of the topic and related issues in other fora of the United Nations. For this purpose, the Assembly

[660] A/C.6/65/L.18.

decided to establish a working group of the Sixth Committee to undertake a thorough discussion of the scope and application of universal jurisdiction. The Assembly further invited Member States and relevant observers, as appropriate, to submit, before 30 April 2011, information and observations on the scope and application of universal jurisdiction, including, where appropriate, information on the relevant applicable international treaties, their domestic legal rules and judicial practice; and requested the Secretary-General to prepare and submit to the General Assembly, at its sixty-sixth session, a report based on such information and observations.

(*k*) Measures to eliminate international terrorism

This item was included in the agenda of the twenty-seventh session of the General Assembly, in 1972, further to an initiative of the Secretary-General.[661] The General Assembly considered the item biennially at its thirty-fourth to forty-eighth sessions, and annually thereafter.

(i) Ad Hoc *Committee established by General Assembly resolution 51/210 of 17 December 1996*

On 17 December 1996, the General Assembly decided by resolution 51/210 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 fourteenth session, the *Ad Hoc* Committee held three plenary meetings, the 44th and 45th on 12 April and the 46th on 16 April 2010, on a draft comprehensive convention on international terrorism.[662] Informal consultations were held on 12 and 13 April, and informal contacts on 9, 12, 13 and 14 April 2010.

(ii) *Sixth Committee*

The Sixth Committee considered the item at its 2nd, 3rd, 4th, 27th and 28th meetings, on 5 and 6 October and on 5 and 11 November 2010.[663] At its first meeting, on 4 October, the Sixth Committee established a Working Group to continue to carry out the mandate of the *Ad Hoc* Committee established by General Assembly resolution 51/210 of 17 December 1996, as contained in resolution 64/118 of 16 December 2009. At the same meeting, the Committee elected Mr. Rohan Perera (Sri Lanka) as Chair of the Working Group. The Working Group held two meetings, on 18 October and on 2 November 2010.

[661] A/8791 and Add.1 and Add.1/Corr.1.

[662] For the report of the *Ad Hoc* Committee, see *Official Records of the General Assembly, Sixty-fifth Session, Supplement No. 37* (A/65/37).

[663] For the summary records of the Sixth Committee, see A/C.6/65/SR/2–4, 27 and 28.

At the 2nd meeting of the Sixth Committee, on 5 October 2010, the Vice-Chair of the *Ad Hoc* Committee established by General Assembly resolution 51/210 introduced the report of the *Ad Hoc* Committee. At the 27th meeting, on 5 November 2010, the Committee received the report on the work of the Working Group and on the results of the informal consultations held during the current session on 20 and 21 October 2010.[664]

In their general comments, delegations stressed that terrorism was one of the most serious threats to worldwide peace and security, with some highlighting that it undermined democracy, peace, freedom and human rights. In that regard, delegations reiterated their firm condemnation of terrorism in all its forms and manifestations and emphasized their commitment to contribute to the international fight against terrorism. It was underlined that no cause could justify terrorism, and some delegations stressed that it should not be associated with any religion, culture, ethnicity, race, nationality or civilization. Views were also expressed that counter-terrorism policies must strike a balance between security considerations and respect for human rights values. Thus, delegations underscored the need for the respect for the rule of law in the context of the fight against terrorism, in strict observance of the Charter of the United Nations and international law, including human rights, humanitarian and refugee law.

Recognizing the central coordinating role of the United Nations in combating terrorism, States were called upon to fully implement all Security Council and General Assembly resolutions on terrorism, singling out in particular Security Council resolutions 1267 (1999) of 15 October 1999, 1373 (2001) of 28 September 2001 and 1540 (2004) of 28 April 2004, as well as the work of the sanctions committees established by these resolutions. Reference was also made by several delegations to the Statement by the President of the Security Council on 27 September 2010.[665] Moreover, several delegations commended the appointment of the Ombudsperson pursuant to Security Council resolution 1904 (2009) of 17 December 2009 and stressed the importance of further improvements to the listing and delisting procedures. The need to consider the impact of the reporting procedures on States was also mentioned by some delegations.

Delegations expressed their continued support for and commitment to the United Nations Global Counter-Terrorism Strategy and its four pillars,[666] and welcomed the recent second biennial review of its implementation.[667] In this respect, it was emphasized that it was important to implement the Strategy as it constitutes a core document and strategic framework of the international community in fighting terrorism. It was also pointed out that the four pillars of the Strategy needed to be implemented without selectivity. Some delegations noted that the Strategy was a living document which needed to be updated regularly. The institutionalization of the Counter-Terrorism Implementation Task Force was also welcomed, and, while underscoring the primary responsibility of States to implement the Strategy, support was expressed for the role of the Task Force in enhancing coordination and coherence of counter-terrorism efforts of the United Nations system and its intention to conduct regular briefings. Several delegations stressed the importance of adequate funding for the Task Force. Furthermore, several delegations stressed that the

[664] A/C.6/65/L.10.

[665] S/PRST/2010/19.

[666] See General Assembly resolution 60/288 of 8 September 2006 and its Annex.

[667] A/64/818.

fight against terrorism included the need to give proper support and protection for the victims of terrorist attacks.

Delegations emphasized that cooperation at the international, regional and sub-regional levels was essential in combating terrorism. Highlighting the crucial role played by the United Nations Office on Drugs and Crime (UNODC) and the Counter-Terrorism Committee Executive Directorate (CTED), some delegations stressed the importance of capacity-building measures and technical assistance. Several delegations also mentioned the importance of developing partnerships, including exchanging information, among States, civil society and the private sector in the field of counter-terrorism.

Furthermore, a number of delegations noted that the complex challenge posed by terrorism necessitated a comprehensive response. In this regard, they alluded to the need to address the root causes of terrorism and to eliminate the conditions conducive to its spread, as well as to address the dangers and destabilizing effects of State terrorism. Several delegations also underscored the importance of dialogue and interaction among various religions, cultures and civilizations. Such approaches would broaden mutual understanding and foster a culture of tolerance. Some delegations pointed to the need for a clear definition of terrorism and echoed the need to distinguish it from the exercise of the right to self-determination of peoples under foreign occupation, colonial or alien domination.

The importance of becoming party to the universal and regional counter-terrorism instruments and implementing them fully was emphasized. Several delegations stressed that perpetrators of acts of terrorism should be prosecuted, and underlined the importance of implementing the *aut dedere aut judicare* obligation in combating terrorism. Several delegations also commended the recent adoption of the Beijing Convention on the Suppression of Unlawful Acts Relating to International Civil Aviation and the Beijing Protocol Supplementary to the Convention for the Unlawful Seizure of Aircraft,[668] as important advancements for counter-terrorism by addressing new and emerging threats to civil aviation.

Some delegations pointed to the potential dangers posed by the possible acquisition by terrorists of weapons of mass destruction. Delegations also worried about the use of information and communication technologies for terrorist purposes, while also sharing their concern about the close links between terrorism and transnational organized crime, including money-laundering, arms smuggling and drugs trafficking, as well as piracy. In particular, some delegations expressed their deep concerns regarding developments concerning the financing of terrorism, especially the increase in incidents of kidnapping and hostage-taking with the aim of raising funds for terrorist purposes. They urged United Nations action to stem the tide of these developments. Attention was also drawn to the tendency to exploit local conditions to build terrorist networks in efforts to further criminal enterprise and extremist ideology. The need to address incitement of terrorism was also underlined by some delegations, as well as the question of deliberate targeting of certain religions to provoke religious intolerance.

A number of delegations described the initiatives taken or planned at the national, regional and global level to counter terrorism and to implement international obligations. This included the adoption of laws, including the criminalization of terrorist acts, as well as

[668] For more information about the Beijing Convention and Protocol, see http://www.icao.int/DCAS2010/.

actions taken with regard to the financing of terrorism, money-laundering, improvements to border security and denial of safe havens.

Concerning the work of the *Ad Hoc* Committee established by General Assembly resolution 51/210, delegations reiterated their call for the early conclusion of the draft comprehensive convention on international terrorism, which would supplement and strengthen the existing legal framework and enhance cooperation between States in their counter-terrorism efforts. In this context, reference was made to the 2005 World Summit Outcome[669] and the United Nations Global Counter-Terrorism Strategy. States were urged to show flexibility and political will in order to resolve the outstanding issues, at the current session, preferably by consensus. The view was also expressed that it might be time to reconsider the usefulness of continuing the current negotiation process in the event no progress could be attained during the current session.

Some delegations reiterated their support for the proposal made by the coordinator of informal contacts at the 2007 session of the *Ad Hoc* Committee for a text of draft article 18[670] and considered that this proposal constituted a balanced and legally sound compromise solution, which properly respected the integrity of international humanitarian law. It was also reiterated that the draft convention should be viewed as a criminal law instrument, dealing with individual criminal responsibility, on the basis of the principle *aut dedere aut judicare*. It did not lent itself to addressing State terrorism. Some delegations expressed their readiness to resolve some of the political difficulties in an accompanying resolution.

While some delegations stated their willingness to continue to consider the Coordinator's 2007 proposal as a compromise text, they reiterated their preference for the earlier proposals relating to draft article 18. On the one hand, it was pointed out that any compromise text had to be predicated on the principle that no cause can justify any act of terrorism and that the text should draw upon existing language that had already been agreed upon elsewhere. On the other hand, the need for a clear legal definition of terrorism, which distinguished terrorism from the legitimate struggle of peoples in the exercise of their right to self-determination from foreign occupation or colonial domination was reaffirmed. Some delegations also expressed the view that the draft convention should address all forms of terrorism, including State terrorism, and that it should cover acts by armed forces not covered by international humanitarian law. In this context, a previously made proposal to add language to draft article 2 was reiterated.

Some delegations reiterated their support for the proposal to convene a high-level conference under the auspices of the United Nations. While some delegations expressed a preference for convening the conference once agreement has been reached on the draft comprehensive convention on international terrorism, some other delegations pointed out that the convening of a conference should not be linked to the conclusion of the draft convention.

Some delegations expressed support for the initiative of Saudi Arabia to establish an international centre, under the aegis of the United Nations, to combat international terrorism, and for the proposal by Tunisia to convene a high-level conference to establish an international code of conduct in the fight against terrorism. Some delegations made

[669] General Assembly resolution 60/1 of 16 September 2005.

[670] A/62/37, annex, para. 14.

reference to the establishment of regional research centres aimed at understanding international terrorism and the need to accord them support.

At the 28th meeting, on 11 November, the representative of Canada, on behalf of the Bureau, introduced a draft resolution entitled "Measures to eliminate international terrorism"[671] and orally revised it by adding an additional operative paragraph, after paragraph 7, reading: "Expresses concern at the increase in incidents of kidnapping and hostage-taking with demands for ransom and/or political concessions by terrorist groups, and expresses the need to address this issue". Also at the 28th meeting, the Secretary of the Committee made a statement regarding the financial implications of the draft resolution. The Committee adopted the draft resolution, as orally revised, without a vote.

(iii) *General Assembly*

By resolution 65/34, the General Assembly strongly condemned all acts, methods and practices of terrorism in all its forms and manifestations as criminal and unjustifiable, wherever and by whomsoever committed and called upon Member States, the United Nations and other appropriate international, regional and subregional organizations to implement the United Nations Global Counter-Terrorism Strategy. The Assembly noted the progress attained in the elaboration of the draft comprehensive convention on international terrorism and, welcoming continuing efforts to that end, decided that the *Ad Hoc* Committee established pursuant to resolution 51/210 of 17 December 1996 shall, on an expedited basis, continue to elaborate the draft comprehensive convention and to discuss the question of convening a high-level conference under the auspices of the United Nations, which was included in its agenda by General Assembly resolution 54/110 of 9 December 1999. The General Assembly further decided that the *Ad Hoc* Committee shall meet from 11 to 15 April 2011 in order to fulfil its mandate.

(*l*) Revitalization of the work of the General Assembly

At its second plenary meeting on 17 September 2010, 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-sixth session of the General Assembly.

(i) *Sixth Committee*

The Committee considered the item at its 28th meeting, on 11 November 2010.[672] At that session, the Chairperson introduced the draft decision on the provisional programme of work for the sixty-sixth session of the General Assembly as proposed by the Bureau.[673] The Committee duly adopted the draft decision.

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[671] A/C.6/65/L.19.

[672] For the summary records of the Sixth Committee, see A/C.6/65/SR/28.

[673] See for the Provisional programme of work of the Sixth Committee for the sixty-sixth session A/C.6/65/L.21.

(ii) *General Assembly*

By decision 65/511 of 6 December 2010, the General Assembly noted the decision of the Sixth Committee to adopt the provisional programme of work for the sixty-sixth session of the General Assembly, as proposed by the Bureau.

(*m*) Administration of justice at the United Nations

By resolution 64/119 of 16 December 2009, recalling its resolution 63/253 of 24 December 2008, the General Assembly adopted the statutes of the United Nations Dispute Tribunal and the United Nations Appeals Tribunal, as set out in annexes I and II to that resolution, and approved the rules of procedure of the United Nations Dispute Tribunal and the United Nations Appeals Tribunal. On 22 December 2009, by resolution 64/233, the Assembly invited the Sixth Committee to consider the legal aspects of the reports to be submitted by the Secretary-General, without prejudice to the role of the Fifth Committee as the Main Committee entrusted with responsibilities for administrative and budgetary matters.

(i) *Sixth Committee*

The Sixth Committee considered the item at its 1st, 4th, 5th, 12th and 18th meetings, on 4, 6, 15 and 22 October 2010.[674]

Pursuant to General Assembly decision 64/527 of 16 December 2009, the Sixth Committee decided, at its 1st meeting, on 4 October 2010, 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, namely, the consideration of the legal aspects of the reports to be submitted in connection with the item. At the same meeting, the Committee elected Mr. Ganeson Sivagurunathan (Malaysia) as Chair of the Working Group and decided to open the Working Group to all States Members of the United Nations or members of the specialized agencies or of the International Atomic Energy Agency. The Working Group held three meetings, on 7, 11 and 14 October 2010. At the 12th meeting of the Committee, on 15 October 2010, the Chair of the Working Group on the Administration of Justice at the United Nations presented an oral report on the work of the Working Group.[675]

Several delegations expressed regret that the report of the Secretary-General[676] had been issued with a delay and that this had not allowed them to adequately prepare for the debate. Some delegations further deplored the fact that the report of the Ombudsman had not yet been issued. While some delegations noted the importance of ensuring a smooth transition from the old system to the new one, some other delegations stressed the importance of addressing the backlog of cases still pending from the old system. The need to examine the question of the permanence of the *ad litem* judges was also mentioned, as

[674] For the summary records of the Sixth Committee, see A/C.6/65/SR/1, 4, 5, 12 and 18.

[675] A/C.6/65/SR.12.

[676] A/65/373 and Corr.1.

well as the importance that the new jurisprudence of the Tribunals remain consistent over time.

Several delegations addressed the issue of providing recourse mechanisms for non-staff personnel, and indeed for all persons working for the United Nations. Some delegations considered that due consideration must be given to the types of recourse that were more appropriate to the different types of personnel. A view was expressed in support of the possibility of a separate dispute resolution mechanism for non-staff personnel, while it was stated that it would be detrimental to the new system to add the cases of non-staff personnel to the jurisdiction of the Tribunals. Still, a view was expressed that it would be premature to make a decision on the various options available, and that it would be better to focus on solving the problems identified by the Secretary-General with the newly implemented system. The view was expressed that none of the options analyzed in the Secretary-General's report seemed to be suitable for non-staff personnel, and that the mechanisms available in the new internal justice system would be the appropriate choice. It was pointed out that a large number of contractors and consultants belonged to funds and programmes of the United Nations system; therefore, a cost sharing agreement should be reached between the United Nations and those entities.

It was mentioned that the number of users of the new system was larger than that of the old system. Some delegations noted that there seemed to be too much dependence on the formal system, and that advantage should be taken of mechanisms to lighten the load of that system. Mention was made of the use of the office of the Ombudsman, and it was stressed that the Tribunals should ensure that frivolous and unnecessary cases were not allowed to overburden the system.

Some delegations welcomed the initiative taken for a regular publication on lessons learned from the jurisprudence of the system to guide managers in solving conflicts. It was further stressed that it was important that managers were being allowed to review their decisions before cases go on to the formal system. Various delegations stressed the vital task fulfilled by the Office of Legal Assistance. Some delegations welcomed the support given to that office, and the need to strengthen its presence outside of United Nations Headquarters was also stressed.

It was underlined that, the reform of the system of administration of justice being a recent and ongoing one, there had not been time to evaluate all of the components of the system. The point was made that it would be premature at this point to amend the statutes of the Tribunals. It was stated that, in any case, care should be taken that any amendments would not affect the independence of the Tribunals and would not have any retroactive effect that could affect cases currently pending. Some delegations further mentioned that the various bodies of the new formal system needed to be given adequate support.

With respect to financial resources, it was observed that, in general, adequate resources must be made available for the system to function properly. It was also mentioned that it would be premature to comment on issues that the Secretary-General in his capacity as chief administrative officer had noted in his report as potentially having financial implications.

At the 12th meeting of the Sixth Committee, on 15 October 2010, the Chair of the Working Group on the Administration of Justice at the United Nations introduced a draft

decision entitled "Administration of justice at the United Nations".[677] At its 18th meeting, on 22 October, the Sixth Committee adopted the draft decision without a vote. At the same meeting, the Committee decided that its Chair would send to the President of the General Assembly a letter drawing his attention to certain specific issues relating to the legal aspects of the reports submitted under the item, as discussed in the Sixth Committee. The letter would contain a request that it be brought to the attention of the Chair of the Fifth Committee and circulated as a document of the Assembly.

(ii) *General Assembly*

By decision 65/513 of 6 December 2010, the General Assembly decided, on the recommendation of the Sixth Committee, that the consideration of the outstanding legal aspects of the item entitled "Administration of justice at the United Nations", including the question of effective remedies for non-staff personnel, as well as the code of conduct for the judges of the United Nations Dispute Tribunal and the United Nations Appeals Tribunal, shall be continued during its sixty-sixth session in the framework of a working group of the Sixth Committee, taking into account the results of the deliberations of the Fifth and Sixth Committees on the item, previous decisions of the Assembly and any further decisions that the Assembly may take during its sixty-fifth session.

On 24 December 2010, the General Assembly also adopted, on recommendation of the Fifth Committee resolution 65/251, entitled "Administration of justice at the United Nations".

(*n*) 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.[678] In 2010, the Committee was composed of the following Member States: Bulgaria, Canada, China, Costa Rica, Côte d'Ivoire, Cuba, Cyprus, France, Honduras, Hungary, Iraq, Libyan Arab Jamahiriya, Malaysia, Mali, Russian Federation, Senegal, Spain, United Kingdom of Great Britain and Northern Ireland and United States of America.

In 2010, the Committee held its 245th to its 249th meeting on 17 February, 20 May, 1 September, 29 September and 28 October 2010 respectively. At its 249th meeting on 28 October 2010, the Committee adopted a number of recommendations and conclusions.

[677] A/C.6/65/L.2.

[678] General Assembly resolution 2819 (XXVI) of 15 December 1971.

(ii) *Sixth Committee*

The Sixth Committee considered the item at its 28th meeting, on 11 November 2010.[679] The Chair of the Committee on Relations with the Host Country introduced the report of that Committee.[680]

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[681] and the Headquarters Agreement[682] was also stressed. The decision of the host country to partly exempt the diplomats from secondary screening procedures and the efforts to ensure the timely issuance of visas were welcomed by some delegations. A view was expressed welcoming steps taken by the host country regarding the exemption from property taxes and urging the host country to resolve this issue. However, a view was also expressed stressing the need to continue to address the outstanding issues concerning the safety and security of a mission to the United Nations, selective treatment of diplomats in airports, immigration, travel restrictions for its staff, customs procedures and parking. Some delegations called for timely issuance of visas. A point was made that it was the responsibility of the Secretary-General to make sure that the obligations of the host country to grant visas under the Headquarters Agreement are observed. The need to treat all missions on the basis of equality and norms of international law was stressed. The Committee on Relations with the Host Country was requested by some delegations to obtain explanations from the JPMorgan Chase Bank regarding its decision to close the accounts of some United Nations missions.

The United States confirmed its commitment to fulfil its obligations under international law and stressed, in particular, that it continued to regard its efforts aimed at improving immigration procedures for diplomats at its airports, mitigating delays in visa issuance and ensuring the safety and security of United Nations missions as ongoing and increasingly successful.

At the 28th meeting, on 11 November, the representative of Bulgaria, on behalf of Cyprus, Canada, Costa Rica, Côte d'Ivoire and Cyprus, introduced a draft resolution entitled "Report of the Committee on Relations with the Host Country".[683] At the same meeting, the Committee adopted the draft resolution without a vote.

(iii) *General Assembly*

By resolution 65/35, the General Assembly requested the host country to continue to solve, through negotiations, problems that might arise and to take all measures necessary to prevent any interference with the functioning of missions; and to consider removing the remaining travel restrictions imposed by it on staff of certain missions and staff members of the Secretariat of certain nationalities. The Assembly noted the concerns expressed by some

[679] For the summary records of the Sixth Committee, see A/C.6/65/SR/28.

[680] See *Official Records of the General Assembly, Sixty-fifth Session, Supplement No. 26* (A/65/26).

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

[682] *Ibid.*, vol. 11, p. 11.

[683] A/C.6/65/L.11.

delegations concerning the denial and delay of entry visas to representatives of Member States, and requested the Committee on Relations with the Host Country to continue its work in conformity with General Assembly resolution 2819 (XXVI) of 15 December 1971.

17. *Ad hoc* international criminal tribunals[684]

(*a*) Organization of the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR)

(i) *Organization of the ICTY*

Judge Patrick L. Robinson (Jamaica) and Judge O-Gon Kwon (South Korea) continued to act as President and Vice-President of the Tribunal, respectively, throughout 2010.

On 18 March 2010, the Security Council adopted resolution 1915 (2010) in which, acting under Chapter VII of the Charter of the United Nations, it decided, *inter alia*, that the total number of *ad litem* judges serving at the ICTY may temporarily exceed the maximum of twelve provided for in article 12, paragraph 1, of the ICTY Statute, to a maximum of thirteen at any one time, returning to a maximum of twelve by 30 June 2010, or upon completion of the *Popović* case, if sooner.

In resolution 1931 (2010) of 29 June 2010, the Security Council, acting under Chapter VII of the Charter of the United Nations, decided, *inter alia*, to extend the terms of office of five permanent judges, who are members of the Appeals Chamber, until 31 December 2012 or until the completion of the cases to which they are assigned, if sooner. In the same resolution, the Council extended the terms of office of eight permanent judges and ten *ad litem* judges, who are members of the Trial Chamber, until 31 December 2011 or until the completion of the cases to which they are assigned, if sooner. The Council also decided to allow *ad litem* Judges Melville Baird (Trinidad and Tobago), Pedro David (Argentina), Elizabeth Gwaunza (Zimbabwe), Frederik Harhoff (Denmark), Flavia Lattanzi (Italy), Antoine Kesia-Mbe Mindua (Democratic Republic of the Congo), Prisca Matimba Nyambe (Zambia), Michèle Picard (France), Árpád Prandler (Hungary), and Stefan Trechsel (Switzerland) to serve at the ICTY beyond the cumulative period of service provided for under article 13 *ter*, paragraph 2, of the ICTY Statute.

By resolution 1954 (2010) of 14 December 2010, the Security Council, acting under Chapter VII of the Charter of the United Nations, decided, *inter alia*, that, notwithstanding the expiry of their terms of office on 31 December 2010, Judges Kevin Parker and Uldis Kinis are authorized to complete the cases they began before the expiry of their terms of office. The Council also decided to allow Judge Kinis to serve at the ICTY beyond the cumulative period of service provided for under article 13 *ter*, paragraph 2, of the ICTY Statute.

At the end of 2010, the permanent judges of the Tribunal were as follows: Patrick Robinson (President, Jamaica), O-Gon Kwon (Vice-President, Republic of Korea), Kevin Parker (Presiding, Australia), Alphons Orie (Presiding, Netherlands), Fausto Pocar (Italy),

[684] This section covers the International Criminal Tribunal for Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR), which were established by Security Council resolutions 827 (1993) of 25 May 1993 and 955 (1994) of 8 November 1994 respectively. Further information regarding the judgments of the ICTY and ICTR is contained in chapter VII of this publication.

Liu Daqun (China), Theodor Meron (United States of America), Carmel Agius (Malta), Jean-Claude Antonetti (France), Bakone Justice Moloto (South Africa), Christoph Flügge (Germany), Burton Hall (Bahamas), Howard Morrison (United Kingdom) and Guy Delvoie (Belgium).

At the end of 2010, 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), and Stefan Trechsel (Switzerland).

(ii) *Organization of the ICTR*

Judge Dennis C.M. Byron (Saint Kitts and Nevis) and Judge Khalida Rachid Khan (Pakistan) continued to act as President and Vice-President of the Tribunal, respectively, throughout 2010.

In resolution 1932 (2010) of 29 June 2010, the Security Council, acting under Chapter VII of the Charter of the United Nations, decided, *inter alia*, to extend the terms of office of two permanent judges, who are members of the Appeals Chamber, until 31 December 2012 or until the completion of the cases to which they are assigned, if sooner. The Council also extended the terms of office of five permanent judges and nine *ad litem* judges, who are members of the Trial Chamber, until 31 December 2011 or until completion of the cases to which they are assigned, if sooner.

In resolution 1955 (2010) of 14 December 2010, the Council decided, *inter alia*, that, notwithstanding the expiry of their terms of office on 31 December 2010, Judge Joseph Asoka de Silva and Judge Taghrid Hikmet are authorized to complete the *Ndindiliyimana et al.* case, and Judge Joseph Masanche is authorized to complete the *Hategekimana* case, which they began before the expiry of their terms of office.

At the end of 2010, the permanent judges were as follows: Dennis C.M. Byron (President, Saint Kitts and Nevis), Khalida Rachid Khan (Vice-President, Pakistan), William H. Sekule (United Republic of Tanzania), Mehmet Güney (Turkey), Andrésia Vaz (Senegal), Arlette Ramaroson (Madagascar), Joseph Asoka Nihal De Silva (Sri Lanka), and Bakhtiyar Tuzmukhamedov (Russian Federation).

At the end of 2010, the *ad litem* judges were as follows: Solomy Balungi Bossa (Uganda), Lee Gacugia Muthoga (Kenya), Florence Rita Arrey (Cameroon), Emile Francis Short (Ghana), Taghrid Hikmet (Jordan), Seon Ki Park (Republic of Korea), Gberdao Gustave Kam (Burkina Faso), Vagn Joensen (Denmark), Joseph Masanche (United Republic of Tanzania), Mparany Rajohnson (Madagascar), Aydin Sefa Akay (Turkey) and Robert Fremr (Czech Republic).

(iii) *Composition of the Appeals Chamber*

At the end of 2010, the composition of the Appeals Chamber was as follows: Patrick L. Robinson (Jamaica), Mehmet Güney (Turkey), Fausto Pocar (Italy), Liu Daqun (China), Andrésia Vaz (Senegal), Theodor Meron (United States), and Carmel Agius (Malta).

(*b*) General Assembly

On 8 October 2010, the General Assembly adopted decisions 71 and 72, by which it took note of the reports[685] of the ICTY and ICTR, respectively.

On 24 December 2010, the General Assembly adopted, on recommendation of the Fifth Committee, resolution 65/252 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 this resolution, the General Assembly, *inter alia*, took note of the first performance report of the Secretary-General on the budget of the ICTR for the biennium 2010–2011,[686] and endorsed the conclusions and recommendations contained in the report of the Advisory Committee on Administrative and Budgetary Questions.[687] The Assembly also recognized the critical importance of retaining highly skilled and experienced staff members with relevant institutional memory in order to successfully complete the trials and meet the targets set out in the completion strategy of the Tribunal.

On the same day, the General Assembly adopted, on recommendation of the Fifth Committee, resolution 65/253 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 first performance report of the Secretary-General on the budget of the ICTY for the biennium 2010–2011,[688] and endorsed the conclusions and recommendations contained in the report of the Advisory Committee on Administrative and Budgetary Questions.[689] The Assembly also recognized the critical importance of retaining highly skilled and experienced staff members with relevant institutional memory in order to successfully complete the trials and meet the targets set out in the completion strategy of the Tribunal.

On 24 December 2010, the General Assembly adopted, on recommendation of the Fifth Committee, resolution 65/258 entitled "Conditions of service and compensation for officials: members of the International Court of Justice and judges and *ad litem* judges of the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda". In this resolution, the General Assembly, *inter alia*, recalled Article 32 of the Statute of the International Court of Justice, as well as relevant resolutions of the General Assembly that govern the conditions of service and compensation for the members of the International Court of Justice and the judges of the ICTY and the ICTR. The Assembly also took note of the reports of the Secretary-General[690] and reaffirmed the principle that the conditions of service and compensation for non-Secretariat United Nations officials shall be separate and distinct from those for officials of the Secretariat.

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[685] A/65/205 and A/65/188.

[686] A/65/578.

[687] A/65/616 and Corr.1.

[688] A/65/581.

[689] A/65/616 and Corr.1.

[690] A/64/635 and Corr.1 and A/65/134 and Corr.1.

(*c*) Security Council

In resolutions 1931 (2010) and 1932 (2010) of 29 June 2010, the Security Council, *inter alia*, recalled that in resolution 1901 (2009) it underlined its intention to extend, by 30 June 2010, the terms of office of all trial judges at the ICTY and the ICTR based on the Tribunals' projected trial schedules, as well as the terms of office of all appeals judges until 31 December 2012.

By resolution 1966 (2010) of 22 December 2010, the Security Council, *inter alia*, recalled its previous resolutions[691] which called on the Tribunals to complete all work in 2010 ("completion strategy") and noted that those envisaged dates had not been met. The Council recalled the statement of the President of the Security Council of 19 December 2008,[692] and reaffirmed the need to establish an *ad hoc* mechanism to carry out a number of essential functions of the Tribunals, including the trial of fugitives who are among the most senior leaders suspected of being most responsible for crimes, after the closure of the Tribunals. Acting under Chapter VII of the Charter of the United Nations, the Council decided to establish the International Residual Mechanism for Criminal Tribunals ("the Mechanism") with two branches, which shall commence functioning on 1 July 2012 (branch for the ICTR) and 1 July 2013 (branch for the ICTY), respectively. The Council also adopted the Statute of the Mechanism, which is annexed to the resolution.

In the same resolution, the Council decided that the provisions of the resolution and the Statutes of the Mechanism and of the ICTY and ICTR shall be subject to transitional arrangements set out in Annex 2 of the resolution. The Council furthermore requested the ICTY and ICTR to take all possible measures to complete their remaining work no later than 31 December 2014. The Council decided that the Mechanism shall continue the jurisdiction, rights and obligations and essential functions of the ICTY and the ICTR, respectively, and that all contracts and international agreements concluded by the United Nations in relation to the ICTY and the ICTR shall continue in force *mutatis mutandis* in relation to the Mechanism. The Council requested the Secretary-General to submit draft Rules of Procedure and Evidence of the Mechanism, which shall be based on the Tribunals' Rules of Procedure and Evidence. The Council also urged the Tribunals and the Mechanism to undertake every effort to refer those cases which do not involve the most senior leaders suspected of being most responsible for crimes to competent national jurisdictions and called upon all States to cooperate to the maximum extent possible in order to receive referred cases from the Tribunals and the Mechanism.

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[691] Security Council resolutions 1503 (2003) of 28 August 2003 and 1534 (2004) of 26 March 2004.

[692] S/PRST/2008/47.

(*d*) Amendments to the Statutes of ICTY and ICTR

(i) *Amendments to the Statute of the ICTY*[693]

No amendments were made to the Statute of the ICTY in 2010.

(ii) *Amendments to the Statute of the ICTR*[694]

By resolution 1932 (2010) of 29 June 2010, the Security Council, acting under Chapter VII of the Charter of the United Nations, decided, *inter alia*, to amend article 12 *ter* of the Statute of the ICTR so that the Secretary-General may, under certain conditions and at the request of the President of the ICTR, appoint a former permanent or *ad litem* judge of the ICTR or the ICTY to serve as an *ad litem* judge in the Trial Chambers for one or more trials.

(*e*) 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*[695]

By decision on 8 December 2010 of the thirty-ninth plenary session of the ICTY, new Rule 75 *bis* and new Rule 75 *ter* were adopted, Rule 15 *ter* and Rule 94 amended, and Rule 23 *ter* was repealed.[696] The changes came into force on 20 December 2010.

The adopted Rules 75 *bis* and 75 *ter* relate to requests for assistance of the Tribunal in obtaining testimony and transfer of persons for the purpose of testimony in proceedings not pending before the Tribunal, respectively.

Rule 94 concerns judicial notice and paragraph (B) was amended so that a Trial Chamber may decide to take judicial notice of adjudicated facts *or of the authenticity of* documentary evidence from other proceedings (amendment emphasized).

In amending Rule 15 *ter* relating to reserve judges, a reserve judge no longer has to pose questions, which are necessary to the reserve judge's understanding of the trial, through the Presiding Judge.

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[693] 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), 1837 (2008), and 1877 (2009).

[694] 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), 1512 (2003), 1824 (2008), 1855 (2008) and 1878 (2009).

[695] International Criminal Tribunal for the former Yugoslavia, document IT/32/Rev.45 dated 8 December 2010.

[696] *Ibid.*, document IT/271 dated 13 December 2010.

(ii) *Amendments to the Rules of Procedure and Evidence of the ICTR*[697]

No amendments were made to the Rules of Procedure and Evidence of the ICTR in 2010.

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

1. International Labour Organization

(*a*) Recommendation and resolutions adopted by the International Labour Conference during its ninety-ninth session (Geneva, June 2010)[698]

At the ninety-ninth session of the International Labour Conference (ILC), one recommendation and nine resolutions were adopted. The recommendation and two resolutions are highlighted below.[699]

(i) *Recommendation concerning HIV and AIDS and the world of work, 2010 (No. 200) and a resolution for its promotion and implementation*

On 17 June 2010, the ILC adopted the first international labour standard on HIV and AIDS, the Recommendation concerning HIV and AIDS and the world of work, 2010 (No. 200), and a resolution for its promotion and implementation.[700] The recommendation, adopted by an overwhelming majority, recognizes HIV and AIDS as workplace issues due to their impact on workers and enterprises. It stresses the unique role of the International Labour Organization (ILO) and workplace actors in reaching those of productive age (15–49), who are most affected by the epidemic and facilitating equal access to prevention, treatment, care and support services through the workplace. The recommendation's key principles reaffirm the ILO's mandate to protect human rights and ensure gender equality in the workplace, calling for protections against HIV-related stigma and discrimination and increased cooperation in the context of UNAIDS to give effect to its provisions.[701]

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[697] Available from http://www.unictr.org/Portals/0/English/Legal/ROP/100209.pdf.

[698] International Labour Organization, *Resolutions adopted by the International Labour Conference at its 99th Session* (Geneva, June 2010). Available from http://www.ilo.org/wcmsp5/groups/public/—ed_norm/—relconf/documents/meetingdocument/wcms_143164.pdf.

[699] The other resolutions concern: resolution to place on the agenda of the next ordinary session of the Conference an item entitled "Decent work for domestic workers"; the arrears of contributions of Ukraine; the Financial report and audited financial statements for 2008–2009; treatment of net premium earned; the assessment of contributions of new member States; the scale of assessments of contributions to the budget for 2011; and the composition of the Administrative Tribunal of the International Labour Organization.

[700] Available from http://www.ilo.org/wcmsp5/groups/public/—ed_norm/—relconf/documents/meetingdocument/wcms_141906.pdf and http://www.ilo.org/wcmsp5/groups/public/—ed_norm/—relconf/documents/meetingdocument/wcms_143164.pdf, respectively.

[701] ILO has been a cosponsor of UNAIDS since 2001.

The recommendation calls for member States to develop, adopt, effectively implement and monitor national policies and programmes on HIV and AIDS and the world of work and integrate these into development plans and poverty reduction strategies. It also invites governments, in consultation with the most representative organizations of employers and workers, to consider affording protection equal to that available under the Discrimination (Employment and Occupation) Convention, 1958,[702] to prevent discrimination based on real or perceived HIV status.

(ii) *Resolution on the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work*

On 15 June 2010, the ILC adopted a revised version of the Annex to the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up, adopted by the ILC in 1998.[703] The revised annex, concerning the follow-up to the Declaration, is aligned with the follow-up to the ILO Declaration on Social Justice for a Fair Globalization, adopted in 2008,[704] and supersedes the original annex.

Under the revised annex, the annual follow-up concerning non-ratified fundamental conventions will continue to be based on the reports requested from members under article 19, paragraph 5(e), of the Constitution of the ILO,[705] which are drawn up so as to obtain information from governments which have not ratified one or more of the fundamental conventions, on any changes which may have taken place in their law and practice, taking due account of article 23 of the ILO Constitution and established practice. The reports, as compiled by the Office, will continue to be reviewed by the Governing Body.

The Global Report, which provides a dynamic global picture relating to the four categories of fundamental principles and rights at work, will be submitted to the ILC for a recurrent discussion on the strategic objective of fundamental principles and rights at work. It will serve as a basis for assessing the effectiveness of the assistance provided by the Organization, and for determining priorities for the following period, including in the form of action plans for technical cooperation designed in particular to mobilize the internal and external resources necessary to carry them out.

(iii) *Resolution concerning the recurrent discussion on employment*

The ILO Declaration on Social Justice for a Fair Globalization, adopted in 2008, called on the ILO to introduce a scheme of recurrent discussions by the International Labour Conference in order to understand better the diverse realities and needs of its members

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[702] United Nations, *Treaty Series*, vol. 362, p. 31.

[703] International Labour Organization, *Record of Proceedings of the 86th Session of the International Labour Conference* (Geneva, June 1998), vol. II, p. 20. The revised Annex adopted by the 99th Session of the International Labour Conference (Geneva, June 2010) is available from: http://www.ilo.org/wcmsp5/groups/public/—ed_norm/—relconf/documents/meetingdocument/wcms_143164.pdf.

[704] International Labour Organization, *Resolutions adopted by the International Labour Conference at its 97th Session* (Geneva, June 2008). Available from http://www.ilo.org/wcmsp5/groups/public/—ed_norm/—relconf/documents/meetingdocument/wcms_098017.pdf).

[705] United Nations, *Treaty Series*, vol. 15, p. 40.

with respect to each of the ILO's strategic objectives; to respond more effectively to these using all ILO's means of action; to adjust ILO's priorities and programmes of action accordingly; and to assess the results of ILO's activities.

The conclusions in the resolution concerning the recurrent discussion on employment emphasize the important role of employment. The ILC calls on governments to produce better employment outcomes by putting employment creation and growth at the heart of macroeconomic policy, analyzing trade policies against their employment impact, and making better use of industrial and sectoral policies. The ILC emphasizes the importance of data and analysis on which reliable policy needs to be based. Following from the experience of the Global Jobs Pact, adopted by the ILC in 2009,[706] as an effective crisis response and recovery strategy, the conclusions go on to promote a new social and economic development paradigm characterized by employment-centred and income-led growth policies, which must be accompanied by a social protection floor to realize full economic and social growth potential.

(*b*) Guidance documents submitted to the Governing Body of the International Labour Office

(i) *Guidelines for port State control officers carrying out inspections under the Work in Fishing Convention, 2007 (No. 188)*[707]

In response to the resolution concerning port State control adopted by the ILC in 2007 in connection with the adoption of the Work in Fishing Convention, 2007 (No. 188) and Recommendation (No. 199), a Tripartite Meeting of Experts to Adopt Port State Control Guidelines for Implementation of the Work in Fishing Convention, 2007 (No. 188) met from 15 to 19 February 2010. The meeting adopted the "Guidelines for port State control officers carrying out inspections under the Work in Fishing Convention, 2007 (No. 188)",[708] which are intended to provide supplementary practical information and guidance to port State administrations that can be adapted to reflect national practices and policies and other applicable international arrangements in force governing port State control inspections of fishing vessels. At its 309th session (November 2010), the Governing Body of the International Labour Office authorized the publication of the guidelines and their promotion together with Convention No. 188.[709]

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[706] International Labour Organization, *Resolutions adopted by the International Labour Conference at its 98th Session* (Geneva, June 2009). Available from http://www.ilo.org/wcmsp5/groups/public/—ed_norm/—relconf/documents/meetingdocument/wcms_115076.pdf.

[707] Available from http://www.ilo.org/ilolex/english/convdisp1.htm.

[708] International Labour Organization, document TMEPSCG/2010/12. Available from http://www.ilo.org/public/english/dialogue/sector/techmeet/tmepscg10/guidelines-en.pdf.

[709] International Labour Organization, document dec-GB.309/15, available from http://www.ilo.org/gb/lang—en/WCMS_146651/index.htm and document GB.309/15(Rev.), available from http://www.ilo.org/wcmsp5/groups/public/—ed_norm/—relconf/documents/meetingdocument/wcms_146480.pdf.

(ii) *Safety recommendations for decked fishing vessels of less than 12 metres in length and undecked fishing vessels*

Following the adoption of the Torremolinos Protocol of 1993[710] relating to the Torremolinos International Convention for the Safety of Fishing Vessels, 1977,[711] the ILO contributed to the development of the "*Safety recommendations for decked fishing vessels of less than 12 metres in length and undecked fishing vessels" approved by the 87th Session (12–21 May 2010) of the IMO's Maritime Safety Committee.* The purpose of the safety recommendations is to provide guidelines to competent authorities for the design, construction, equipment and training of the crew of small fishing vessels. At its 309th session (November 2010), the Governing Body of the International Labour Office approved the publication of the "*Safety recommendations for decked fishing vessels of less than 12 metres in length and undecked fishing vessels*" as a joint Food and Agriculture Organization (FAO)–ILO–International Maritime Organization (IMO) publication.[712]

(iii) *List of occupational diseases (revised 2010)*

On 25 March 2010, the Governing Body of the International Labour Office approved the new list of occupational diseases,[713] elaborated by a meeting of experts held from 27 to 30 October 2009. Designed to assist countries in the prevention, recording, notification and, if applicable, compensation of diseases caused by work, this new list replaces the one in the Annex to the Recommendation concerning the List of Occupational Diseases and the Recording and Notification of Occupational Accidents and Diseases (No. 194) which was adopted in 2002.

(iv) *Joint ILO–World Health Organization (WHO) policy guidelines on improving health workers' access to HIV and tuberculosis (TB) prevention, treatment, care and support services, and the WHO–ILO Global Framework for National Occupational Health Programmes for Health Workers*

At its 309th session (November 2010), the Governing Body of the International Labour Office authorized the publication of the "*Joint ILO–WHO policy guidelines on improving health workers' access to HIV and TB prevention, treatment, care and support services",* and the "*WHO–ILO Global Framework for National Occupational Health Programmes for Health Workers*" as joint ILO–WHO publications.[714] The publications are intended to serve

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[710] IMO/SFV-P/CONF/3 (draft).

[711] IMO/SFV/CONF/8 and Corr.1.

[712] *Ibid.*

[713] International Labour Organization, document dec-GB.307/13, available from http://www.ilo.org/gb/lang—en/WCMS_125119/index.htm, and document GB.307/13(Rev.), available from http://www.ilo.org/wcmsp5/groups/public/—ed_norm/—relconf/documents/meetingdocument/wcms_124777.pdf.

[714] International Labour Organization, document dec-GB.309/15, available from http://www.ilo.org/gb/lang—en/WCMS_146651/index.htm; document GB.309/15(Rev.), available from http://www.ilo.org/wcmsp5/groups/public/—ed_norm/—relconf/documents/meetingdocument/wcms_146480.pdf; and document GB.309/STM/1/2, available from http://www.ilo.org/wcmsp5/groups/public/—ed_norm/—relconf/documents/meetingdocument/wcms_145837.pdf).

as guidelines to help implement sector-specific policies and actions based on the Recommendation concerning HIV and AIDS and the world of work, 2010, which emphasizes the protection of workers from exposure to HIV and tuberculosis in the occupational setting.

(*c*) Legislative advisory services

The ILO provided advisory services to assist with the revision of national labour legislation in 17 countries in 2010. In addition, in collaboration with the International Training Centre of the ILO, the ILO organised Participatory Labour Law Making courses in English, French and Russian.

In April 2010, the ILO launched a new online database on Employment Protection Legislation (EPLex) which provides detailed information on employment termination laws of some 80 countries.[715] EPLex covers all the key topics which are regularly examined in national and comparative studies on employment termination legislation. The information is broken down to cover more than 50 variables, and will be updated annually to facilitate analysis of impacts and trends over time.

2. Food and Agriculture Organization of the United Nations

(*a*) Constitutional and general legal matters

At its 139th session (17 to 21 May 2010),[716] the Council adopted a "Procedure concerning the Address to the Council by candidates for the Office of Director-General", as foreseen in rule XXXVII, paragraph 1(c) of the General Rules of the Organization (GRO). The Council decided that it would apply this procedure at its 141st session in April 2011. The Council also endorsed a proposed procedure concerning the address to the Conference by candidates for the office of Director-General and recommended its adoption by the Conference at 37th session in June and July 2011.

Moreover, the Council adopted resolutions amending the Statutes of the African Forestry and Wildlife Commission (AFWC) and of the Near East Forestry and Range Commission (NEFRC). The Council also recommended that a correction be made to rule XXXIII, paragraph 7, of the GRO, in order to faithfully reflect the content of the negotiated text included in document "Reform of the Committee on World Food Security"[717] whereby "[t]he Committee on World Food Security is and remains and intergovernmental Committee in FAO".

At its 140th session (29 November- 3 December 2010),[718] the Council amended the terms of reference of the Commission for Inland Fisheries and Aquaculture of Latin America and the Caribbean (COPESCAALC), adopting its revised Statutes. It also adopted a

[715] See http://www.ilo.org/dyn/eplex/termmain.home.

[716] See Food and Agriculture Organization, Report of the Council (17–21 May 2010), available from http://www.fao.org/docrep/meeting/019/K7553E.pdf.

[717] CFS: 2009/2 Rev.2.

[718] See Food and Agriculture Organization, Report of the Council (29 November—3 December 2010), available from http://www.fao.org/docrep/meeting/021/K8990E.pdf.

resolution entitled "Amendment to the Agreement for the Establishment of a Regional Animal Production and Health Commission for Asia and the Pacific" (APHCA). Finally, the Council approved the change of name and amendments to the Statute of the European Inland Fisheries and Aquaculture Advisory Commission (EIFAAC).

At its 91st Session (20 to 22 September 2010),[719] the Committee on Constitutional and Legal Matters approved its Rules of Procedure, which will be included in Volume I of the Basic Texts of the Organization.

(*b*) Legislative matters

(i) *Activities connected with international meetings*

Consultation meeting relating to the possible establishment of regional fisheries arrangement for the Red Sea and Gulf of Aden, Asmara, Eritrea, January 2010.

Steering Committee for the Establishment of the Central Asian and Caucasus Fisheries and Aquaculture Commission, Istanbul, Turkey, 24–25 February 2010.

Workshop on FAO Off-Shore Mari-culture initiative, Orbetello, Italy, 22–25 March 2010.

Commission on Phytosanitary Measures, Rome, Italy, 22–26 March 2010.

European Inland Fisheries and Aquaculture Advisory Commission, Zagreb, Croatia, 17–20 May 2010.

Fourth Regional Advisory Committee Meeting of the Strategic Partnership for Sustainable Fisheries in Sub-Saharan Countries, Walvis Bay, Namibia, 1–4 June 2010.

Consultation Meeting in the Eastern and Anglophone Western Africa Regional on "FAO Voluntary Guidelines on Responsible Governance of Tenure of Land and Other Natural Resources", Addis Ababa, Ethiopia, 20–22 September, 2010.

First Conference of African Ministers of Fisheries and Aquaculture, Banjul, Gambia, 20–23 September 2010.

Global Conference on Aquaculture, Phuket, Thailand, 22–25 September 2010.

FAO Sub-Committee on Aquaculture, Phuket, Thailand, 27 September-1 October 2010.

Near East Plant Protection Organization, Rabat, Morocco, 25—29 October 2010.

United Nations Environment Programme (UNEP) Second Expert Group meeting on Development of Legal and Institutional Infrastructures and Cost Recovery Measures, Geneva, Switzerland, 1–2 November 2010.

International workshop on Land Consolidation and Land Banking, Budapest, Hungary, 8–11 November 2010.

[719] See Food and Agriculture Organization, Report of the 91st session of the Committee on Constitutional and Legal Matters (Rome, 20–22 September 2010) available from http://www.fao.org/docrep/meeting/019/k8928e.pdf.

Global Environment Facility (GEF) Meeting on Areas beyond National Jurisdiction (ABNJ) and Strategic Partnership for Sustainable Fisheries in Sub-Saharan Countries, Washington D.C., United States of America, 13 November 2010.

European Inland Fisheries Advisory Commission, Rome, 22 November 2010.

Presentation made on "FAO and the FAO Legal Office (LEGN)'s Activities on the Forestry Sector and Fight Against Illegal Logging", during the "Regional Conference on Illegal Logging and Environmental Crime", Budapest, Hungary, 24–25 November 2010.

Informal meeting on legal matters related to pesticides and chemicals management, Rome, Italy, December 2010.

First International Conference on Veterinary Legislation organized by the World Organization for Animal Health (OIE), Djerba, Tunis, 8–9 December 2010.

(ii) *Legislative assistance and advice*

During 2010 legislative assistance and advice were given to the following countries and regions on the following topics:

a. Food safety and quality

Angola, Argentina, Azerbaijan, Bahamas, Brazil, Cambodia, Cameroon, Cape Verde, Chile, Costa Rica, Democratic Republic of the Congo, Ecuador, Laos, Lebanon, Micronesia, Morocco, Nicaragua, Peru and Viet Nam.

b. Animal (animal health, animal welfare, livestock, feed, veterinary drugs)

Algeria, Angola, Armenia, Azerbaijan, Bahamas, Cambodia, Cameroon, Colombia, Dominican Republic, Ecuador, Egypt, Lebanon, Libya, Maldives, Mauritania, Morocco, Peru, Near East, Swaziland, Tajikistan, Timor-Leste, Tunisia, Bolivia and Venezuela. In addition, legislative assistance was provided through a regional project in Djibouti, Ethiopia, Kenya, Maldives and Somalia.

c. Plant (pesticides, seeds, organic, plant protection)

Afghanistan, Algeria, Angola, Bahamas, Belize, Benin, Bolivia, Botswana, Burkina Faso, Burundi, Cambodia, Cameroon, Cape Verde, Central African Republic, Republic of the Congo, Costa Rica, Côte d'Ivoire, Djibouti, Dominican Republic, Democratic Republic of the Congo, Ecuador, Egypt, El Salvador, Eritrea, Ethiopia, Gabon, Gambia, Ghana, Guatemala, Guinea, Guinea-Bissau, Honduras, Indonesia, Kenya, Kyrgyzstan, Laos, Lebanon, Lesotho, Liberia, Libya, Madagascar, Malawi, Malaysia, Maldives, Mali, Mauritania, Mauritius, Morocco, Mozambique, Myanmar, Nepal, Nicaragua, Nigeria, Panama, Paraguay, Peru, Philippines, Rwanda, Senegal, Seychelles, Sierra Leone, Somalia, South Africa, Sudan, Swaziland, Syria, Tanzania, Thailand, Togo, Tunisia, Turkmenistan, Uganda, Ukraine, Uzbekistan, Zambia and Zimbabwe. In addition, legislative assistance was provided through a regional project for the Common Market for Eastern and Southern Africa (COMESA) and in Cambodia, China, Viet Nam and Laos; in Jordan, Lebanon, Sudan, Syria, United Arab Emirates and Yemen; and in Armenia, Georgia and Moldova.

d. Agrarian (trade, marketing, gender, agrarian)

Angola, Cape Verde, Côte d'Ivoire, Ecuador, Gabon, Iraq, Lebanon, former Yugoslav Republic of Macedonia, Maldives, Morocco, Mozambique, Paraguay, Sao Tome & Principe and Sudan. In addition, legislative assistance was provided through an inter-regional project for Mozambique and Timor-Leste.

e. Land and water

Afghanistan, Albania, Angola, Bosnia and Herzegovina, Cambodia, Cameroon, Cape Verde, Chad, China, Côte d'Ivoire, Ecuador, Iraq, Jordan, Malaysia, Maldives, Moldova, Mozambique, Nepal, Sao Tome & Principe, Sudan, Thailand and Viet Nam. In addition, legislative assistance was provided through a regional project for Nicaragua, Guatemala, El Salvador and Honduras; and through an inter-regional project for Mozambique and Timor-Leste.

f. Food security

Afghanistan, Angola, Bahamas, Colombia, Ecuador, El Salvador, Honduras, Peru, Sierra Leone, Tanzania and Uganda.

g. Fisheries and aquaculture

Benin, Bolivia, Cambodia, Cameroon, Côte d'Ivoire, Croatia, Djibouti, Democratic Republic of the Congo, El Salvador, Gabon, Ghana, Guatemala, Honduras, Indonesia, Iraq, Laos, Liberia, Morocco, Nicaragua, Nigeria, Palau, Papua New Guinea, Philippines, Red Sea and Gulf of Aden, Sierra Leone, Sri Lanka, Sub-Saharan Africa, Thailand, Timor-Leste, Togo, Uganda, Uruguay and Viet Nam.

h. Forestry and environment (wildlife, climate change, natural resources)

Afghanistan, Burkina Faso, Comoros Islands, Costa Rica, Côte d'Ivoire, Chad, China, Democratic Republic of the Congo, Ecuador, Gambia, Ghana, Kazakhstan, Lebanon, former Yugoslav Republic of Macedonia, Nepal, Peru, Rwanda, Serbia, Syria, Tajikistan, Tanzania, Thailand, Togo, Viet Nam and Zambia. In addition, legislative assistance was provided through two regional projects, one in Gambia, Guinea, Guinea-Bissau, Mali, Mauritania, Niger, Senegal and Sierra Leone and another one for the Common Market for Eastern and Southern Africa (COMESA) in Cameroon, Democratic Republic of the Congo, Central African Republic and Gabon; and through an inter-regional project for all African, Caribbean and Pacific (ACP) countries.

(iii) *Legislative research and publications*

The FAO Legal Office published the following Legal Papers Online in 2010:[720]

Implicaciones jurídicas y prácticas de la nueva normativa europea para prevenir, desalentar y eliminar la pesca ilegal, no declarada y no reglamentada.

[720] Available from http://www.fao.org/legal/prs-ol/years/2010/list10.htm.

Wildlife Law in the Southern African Development Community.

Wildlife legislation and the empowerment of the poor in Asia and Oceania.

Regulatory measures against outbreaks of highly pathogenic avian influenza.

(iv) *Collection, translation and dissemination of legislative information*

FAOLEX[721] is the Legal Office's response to the statutory mandate conferred on FAO under article XI of its Constitution. FAOLEX is designed to provide online access to the full texts of food and agriculture legislation worldwide. It offers access to legislation, regulations and international agreements in 16 different areas related to FAO's fields of expertise. It is a comprehensive research tool which can be used to identify the state of national laws on natural resource management and, at the same time, to compare legislation in different countries. FAOLEX provides a trilingual (English, French and Spanish) keyword and category search. Records are provided in English, French, Spanish or the language of communication used by the originating country. A simple search function (Google-type) has been integrated in the FAOLEX search.

The Legal Office further maintains other online databases freely accessible, i.e.:

- FISHLEX,[722] a database on coastal state requirements for foreign fishing;

- WATERLEX,[723] a legislative database that contains an analysis of the legal framework governing water resources in a large number of countries;

- WATER TREATIES,[724] a database containing International agreements on international water sources;

- HISTORICAL DATABASE,[725] a database being built on the historical legislation kept by the Legal Office in microfilms.

In 2010, 7848 new records were entered into FAOLEX, bringing the grand total to some 100,000 records entered since inception in 2000. Approximately 11,500 already present records were revised or consolidated with reprints.

Furthermore, among various collaborations with worldwide institutions at various levels, a Partnership Agreement with UNEP and the World Conservation Union (IUCN) was signed by FAO in 2001. The Agreement was based on the recognition of the achievements of FAOLEX in providing information on food and agricultural law as well as environmental law. UNEP, IUCN and FAO then agreed to consolidate their efforts in order to facilitate access to information on natural resources legislation by users, particularly in developing countries and countries with economies in transition. The joint environmental law information service (ECOLEX) contains references to and the texts of international treaties, European Union legislation and national legislation, soft law instruments, policy and law literature, and judicial decisions in the field of the environment.[726]

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[721] Available from http://faolex.fao.org/faolex.

[722] Available from http://faolex.fao.org/fishery.

[723] Available from http://waterlex.fao.org/waterlex.

[724] Available from http:// faolex.fao.org/watertreaties.

[725] Available from the FAOLEX home page, http://faolex.fao.org/faolex.

[726] Available from www.ecolex.org.

3. United Nations Educational, Scientific and Cultural Organization

(*a*) International regulations

(i) *Entry into force of instruments previously adopted*

Within the period covered by this review, no multilateral conventions or agreements adopted under the auspices of the United Nations Educational, Scientific and Cultural Organization (UNESCO) entered into force.

(ii) *Proposals concerning the preparation of new instruments*

a. Proposals on the desirability of a standard-setting instrument on the conservation of historic urban landscapes

During 2010, preparatory work was undertaken on proposals on the desirability of a standard-setting instrument on the conservation of historic urban landscapes. This issue is included in the provisional agenda of the thirty-sixth session of the General Conference (25 October—11 November 2011).

b. 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

During 2010, preparatory work was undertaken on the Preliminary study of the technical and legal aspects of a possible international standard-setting instrument for the protection of indigenous and endangered languages, including a study of the outcomes of the programme implemented by UNESCO relating to this issue. This Preliminary study is included in the provisional agenda of the thirty-sixth session of the General Conference (25 October—11 November 2011).

(*b*) Human rights

(i) *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 31 March to 2 April 2010 and from 6 to 8 October 2010 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 2010 session, the Committee examined 19 communications of which one was examined with a view to determining its admissibility or otherwise, while 18 were examined as to their substance. One communication was struck from the list because it was considered as having been settled. The examination of the 18 communications was deferred. The Committee presented its report to the Executive Board at its 184th session.

At its October 2010 session, the Committee examined 24 communications of which one was examined with a view to determining its admissibility, 17 were examined

as to their substance and six were examined for the first time. Two communications were struck from the list because they were considered as having been settled. One communication was also struck from the list because it was considered as inadmissible. The examination of the 21 communications was deferred. The Committee presented its report to the Executive Board at its 185th session.

(*c*) Copyright activities

(i) *Information and public awareness activities*

The Collection of National Copyrights Laws,[727] an essential tool for professionals, students and researchers, endeavours to provide access to legal texts. It was thoroughly updated in 2010 and currently comprises approximately 145 entries on national copyright and related rights legislation of UNESCO member States.

The UNESCO World Anti-Piracy Observatory,[728] a web-based reference tool, is another UNESCO information-sharing initiative in the copyright area. Its objective is to monitor anti-piracy issues and to serve as an online platform (clearing house) for the exchange of information and good practices in this area. More than 100 country profiles are available for free downloading and use. The Observatory was launched in January 2010.

(ii) *Administration of the Universal Copyright Convention and the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations*

The twentieth session of the Intergovernmental Committee of the Rome Convention (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 2010 in Geneva. The fourteenth session of the Intergovernmental Copyright Committee (ICC), established under the Universal Copyright Convention,[729] for which UNESCO provides the Secretariat, took place from 7 to 9 June 2010. The Committee decided to suspend rule 2(1) of its Rules of Procedure concerning periodicity of ordinary sessions and to convene ordinary sessions at the request of one third of its members following the initiative either of one or more of its members or of the Secretariat.

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[727] Available from http://portal.unesco.org/culture/en/ev.php-URL_ID=14076&URL_DO=DO_TOPIC&URL_SECTION=201.html.

[728] Available from http://portal.unesco.org/culture/en/ev.php-URL_ID=39055&URL_DO=DO_TOPIC&URL_SECTION=201.html.

[729] United Nations, *Treaty Series*, vol. 943, p. 193.

4. International Civil Aviation Organization

General Work Programme of the Legal Committee

Pursuant to a decision of the 191st Session of the Council of the International Civil Aviation Organization (ICAO), the General Work Programme of the Legal Committee is as follow:

(i) *Compensation for damage caused by aircraft to third parties arising from acts of unlawful interference or from general risks*

A diplomatic conference was held from 20 April to 2 May 2009 at ICAO Headquarters in Montreal and adopted the texts of following:

a) Convention on Compensation for Damage to Third Parties, Resulting from Acts of Unlawful Interference Involving Aircraft;[730] and

b) Convention on Compensation for Damage Caused by Aircraft to Third Parties.[731]

The Convention on Compensation for Damage to Third Parties, Resulting from Acts of Unlawful Interference Involving Aircraft establishes an International Civil Aviation Compensation Fund (International Fund). The Preparatory Commission for the establishment of the International Fund held three meetings, the first in Pretoria from 25 to 27 January 2010; the second in London from 21 to 23 June 2010; and the third in Singapore from 7 to 10 December 2010. The Commission worked on a wide range of issues in fulfilment of its mandate, among them the Regulations of the International Fund; Recommendation on Period and Amount of Initial Contributions to the Fund; Guidelines for Compensation; Guidelines on Investment; and Guidelines in Case of Events in States Non-Party.

The thirty-seventh Session of the Assembly noted the progress made and urged States with relevant experts to join in the work of the Preparatory Commission. States were also urged to bring about the entry into force of the two Conventions adopted in 2009.

(ii) *Acts or offences of concern to the international aviation community and not covered by existing air law instruments*

The Diplomatic Conference on Aviation Security, held in Beijing from 30 August to 10 September 2010, adopted the Convention on the Suppression of Unlawful Acts Relating to International Civil Aviation (the Beijing Convention)[732] and the Protocol Supplementary to the Convention for the Suppression of Unlawful Seizure of Aircraft (the Beijing Protocol).[733] The Conference was attended by representatives from 76 States as well as observers from four international organizations.

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[730] International Civil Aviation Organization, Document No. 9920.

[731] *Ibid.*, Document No. 9919.

[732] Available from http://www.icao.int/DCAS2010/restr/docs/beijing_convention_multi.pdf.

[733] Available from http://www.icao.int/DCAS2010/restr/docs/beijing_protocol_multi.pdf.

The Beijing Convention modernized the 1971 Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation[734] and its 1988 Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, Supplementary to the Convention of 23 September 1971[735] by criminalizing the act of using civil aircraft as weapons, and the act of using dangerous materials to attack aircraft or other targets. The unlawful transport of biological, chemical and nuclear weapons and their related material has been made punishable. Cyber attacks on air navigation facilities will also trigger criminal responsibility. By the end of the year, the Convention was signed by 20 States.

The Beijing Protocol updated the Convention for the Suppression of Unlawful Seizure of Aircraft (The Hague, 1970), by expanding its coverage against the different forms of aircraft hijackings. By the end of the year, the Protocol was signed by 22 States.

Both the Convention and the Protocol specifically cover the criminal liability of directors and organizers of an offence under the treaties. Making a threat to commit an offence under the treaties may be criminally accountable when the circumstances indicate that the threat is credible. Under certain conditions, agreement or contribution to an offence, whether such an offence is actually committed or not, may also be punishable. The treaties update provisions to promote cooperation between States in combating unlawful acts directed against civil aviation while emphasizing human rights and fair treatment of suspects.

In light of ICAO Assembly Resolution A37–23: Promotion of the Beijing Convention and the Beijing Protocol of 2010, the Council and the Secretariat began promoting the ratification of the Beijing instruments.

On another subject under this item, the Secretariat Study Group on Unruly Passengers was reactivated at the end of 2010.

(iii) *International interests in mobile equipment (aircraft equipment)*

On behalf of the Council in its capacity as the Supervisory Authority of the International Registry of Mobile Assets, the Secretariat continued monitoring the operation of the Registry to ensure it functions efficiently, in accordance with article 17 of the Convention on international interests in mobile equipment of 2001 ("Cape Town Convention").[736] The Council issued its second report to the Parties to the Cape Town Convention and its Protocol on Matters Specific to Aircraft Equipment (with Annex),[737] concerning the discharge of its functions as Supervisory Authority and, during its 189th Session, approved changes to the Regulations and Procedures for the International Registry.[738] The fourth edition of the Regulations and Procedures for the International Registry was published in July. As a result of the Council's decision in October 2009 to reappoint Aviareto Ltd. as the Registrar for a second five-year term commencing 1 March 2011, a new contract with the Registrar was prepared.

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[734] United Nations, *Treaty Series*, vol. 974, p. 177.

[735] *Ibid.*, vol. 1589, p. 474.

[736] *Ibid.,* vol. 2307, p. 285.

[737] *Ibid.*, vol. 2367, p. 615.

[738] International Civil Aviation Organization, Document No. 9864.

(iv) *Review of the question of the ratification of international air law instruments*

The Secretariat continued to take the administrative actions necessary to encourage ratification of international air law treaties, such as developing and disseminating ratification packages and promoting ratification at various meetings and seminars. The President of the Council and the Secretary General, during their visits to States, emphasized ratification matters. Air law treaties were promoted during the thirty-seventh Session of the Assembly, Council meetings and the Beijing Diplomatic Conference on Aviation Security.

The electronic Treaty Collection was further enhanced, and its visibility heightened with a link on the ICAO website under the heading "Most Popular".[739]

The Collection contains the current lists of parties to air law treaties; the status forms of individual States with regard to treaties; a composite table showing parties to treaties and status of individual States; a chronological record of depositary activity; and administrative packages to assist States in becoming parties to air law treaties. The Beijing Convention and Protocol adopted on 10 September 2010 were the latest additions to the Treaty Collection, which is updated with each depositary action.

Together with newly added Assembly resolutions related to ratification matters and current relevant information and recommendations, these materials replace the State letters which had circulated this information twice a year.

(v) *Safety aspects of economic liberalization and article 83* bis

The Secretariat continued to actively monitor this issue. In this context, legal support was provided for the establishment of the necessary framework to implement article 21 of the Convention on International Civil Aviation[740] regarding a database of aircraft registration and ownership, as well as for an international register of air operator certificates.

(vi) *Consideration of guidance on conflicts of interest*

The consideration of guidance on conflicts of interest was added to the work programme following a proposal made at the thirty-seventh Session of the Assembly.

In the given context, it was suggested to consider conflicts of interest in three distinct areas: 1) financial interests in regulated entities; 2) the movement of individuals from positions in government to industry and vice versa; and 3) the practice of designating or seconding personnel to carry out oversight functions on behalf of the Civil Aviation Authority. The Legal Committee will study this matter further and recommend, if necessary and appropriate, promulgation of guidance material.

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[739] The Treaty Collection is available from http://www2.icao.int/EN/LEB/Pages/TreatyCollection.aspx.

[740] United Nations, *Treaty Series*, vol. 15, p. 295.

(vii) *Technical cooperation projects and activities*

During 2010, there were 15 national and seven regional active technical cooperation projects supporting activities linked to international air law. Major achievements over the period included:

a. Africa-Indian Ocean (AFI) Region

Development of primary civil aviation legislation for the Central African Economic and Monetary Community (CEMAC) States; and

Development of a set of national civil aviation regulations for one State.

b. Asia and Pacific (APAC) Region

Revision of regulations and procedures for compliance with SARPs for the Directorates of Airports, Air Navigation, Airworthiness, Operation and Security of one State.

c. Caribbean and South American (CAR/SAM) Region

Assessment of the civil aviation regulatory framework of one State;

d. Europe and Middle East (EUR/MID) Region

Review and amendment of the Aviation Law in one State.

5. International Maritime Organization

(*a*) Membership of the Organization

As of 31 December 2010, the membership of the International Maritime Organization (IMO) stood at 169.

(*b*) Work undertaken by the Legal Committee of the IMO

The Legal Committee ("the Committee") held its ninety-seventh session from 15 to 19 November 2010.

(i) *Monitoring the implementation of the revision of the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996 ("HNS Convention")*[741]

The Committee noted the report by the Secretariat on the outcome of the 2010 International Conference on the Revision of the HNS Convention and the adoption of the Protocol of 2010 to the International Convention on Liability and Compensation for Damage in

[741] LEG/CONF.10/8/2 of 9 May 1996.

Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996 (the HNS Protocol),[742] including the texts of the four Conference resolutions, which read as follows:[743]

Resolution 1, setting up the HNS Fund;

Resolution 2, promotion of technical co-operation and assistance;

Resolution 3, avoidance of a situation in which two conflicting treaty regimes are operational;

Resolution 4, implementation of the 2010 HNS Protocol.

The Committee noted the technical advice provided by the Secretariat on issues identified during the preparatory work on the 2010 HNS Protocol, including the need to clarify the list of substances to be included in the definition of HNS and also noted that the complete text of the International Maritime Dangerous Goods Code (IMDG Code), incorporating amendment 27–94, which was in effect in 1996, will be placed on the IMO website in PDF format.

The Committee noted the update provided by the International Oil Pollution Compensation Funds (IOPC Funds) regarding the actions taken to date by the 1992 Funds Secretariat on setting up the HNS Fund, including: the establishment of a system for calculating contributing cargo under the Convention; the revision of the information brochure on the HNS Convention to take into account the adoption of the 2010 HNS Protocol; and the Fund Administrative Council's instruction to the Director to carry out the preparatory tasks for the setting up of the HNS Fund, in accordance with Conference resolution 1. The Committee requested the IOPC Funds Secretariat to keep the Committee updated on the preparations for the entry into force of the HNS Convention.

The Committee agreed that States should give preliminary focus to ratification and implementation of the HNS Protocol; the lists of solid bulk materials possessing chemical hazards which are mentioned by name in the International Maritime Solid Bulk Cargoes Code (IMSBC Code) and which are also mentioned by name in the IMDG Code in effect in 1996 and solid bulk materials possessing chemical hazards that are mentioned by name in the IMDG Code in effect in 1996 should be circulated as information for use by States which are considering becoming party to the 2010 HNS Protocol; these lists shall be reviewed by the relevant bodies of the Organization, probably on a two-year cycle; and when the Convention enters into force, the work should thereafter be carried out under the auspices of the HNS Funds Assembly.

(ii) *Provisions of financial security in cases of abandonment, personal injury to, or death of seafarers in light of the progress towards the entry into force of the International Labour Organization (ILO) Maritime Labour Convention, 2006,*[744] *and of the amendments relating thereto*

The Committee noted the information provided by the ILO, reporting the outcome of the ILO Preparatory Tripartite Maritime Labour Convention 2006 (MLC 2006) Commit-

[742] LEG/CONF.17/10 of 4 May 2010.

[743] For the text of the resolutions, see LEG/CONF.17.11 of 4 May 2010.

[744] *United Nations Juridical Yearbook 2006* (United Nations Publication, Sales No. E.09.V.1), p. 325.

tee meeting, held in September 2010, including the progress towards the entry into force of MLC 2006 and the fact that all States were encouraged to ratify this Convention to enable it to enter into force in 2012. Most delegations that spoke supported the early amendment of MLC 2006 to introduce mandatory provisions of financial security for abandonment, personal injury to and death of seafarers.

(iii) *Fair treatment of seafarers in the event of a maritime accident*

The Committee noted a report by the delegation of the Islamic Republic of Iran providing observations on the unfair treatment of seafarers because of nationality or religion. While the legitimate security concerns of coastal States were recognized, most delegations that spoke shared concerns regarding discriminatory treatment of seafarers in the context of shore leave, and recognized shore leave as a right for seafarers. The Committee requested the Secretariat to bring to the attention of the Facilitation Committee and the Maritime Safety Committee the sections of those documents which were pertinent to this issue, and to discuss which Committee was the most appropriate forum for considering the issue and developing measures to address it.

The Committee noted the information provided by the observer delegation of the Baltic and International Maritime Council (BIMCO), summarizing the main findings of BIMCO's recently revised study on the treatment of seafarers, as well as its two surveys on fair treatment and abandonment of seafarers. The Committee agreed that the report indicated that the unfair treatment of seafarers continued to be a problem; however, a number of comments were made questioning the reliability of certain aspects of the study and surveys.

The Committee agreed that the IMO/ILO Guidelines on fair treatment of seafarers in the event of a maritime accident[745] should be implemented in tandem with the IMO Code of the International Standards and Recommended Practices for a Safety Investigation into a Marine Casualty or Marine Incident (Casualty Investigation Code);[746] and that ineffective implementation of the Guidelines and the continued unfair treatment of seafarers could have an adverse impact on recruitment of seafarers and on IMO's "Go to Sea!" campaign.

(iv) *Implementation of the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001*[747]

The Committee noted the report by the Bunkers Correspondence Group (BCG) regarding how to facilitate further ratifications and promote harmonized implementation of the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 (Bunkers Convention).

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[745] Resolution LEG.3(91).

[746] Resolution MSC.255(84).

[747] *United Nations Juridical Yearbook 2001* (United Nations Publication, Sales No. E.04.V.12) p. 310.

a. Interface between the International Convention on Civil Liability for Oil Pollution Damage, 1992 (CLC),[748] and the Bunkers Convention

The Committee approved the draft resolution on the issuing of bunkers certificates to ships that are also required to hold a CLC certificate, reflecting the majority view of the BCG, and decided to submit it to the 106th regular session of the Council for consideration and, thereafter, for submission to the twenty-seventh regular session of the Assembly for adoption.

b. Insurance and liability for claims where the Convention on Limitation of Liability for Maritime Claims (LLMC 76)[749] does not apply (claims concerning Mobile Offshore Drilling Units)

The Committee noted that there was general agreement in the BCG that Mobile Offshore Drilling Units (MODUs) fell under the provisions of the Bunkers Convention, as they would be covered by the definition of "ship" under article 1. The issue was, however, that MODUs are not covered by LLMC 76 and, consequently, it is uncertain how to calculate the insurance amount according to LLMC 76 where no other (lower) national limit is applicable. The majority of the BCG felt that it was necessary to separate the insurance requirement and the liability limits for insurance purposes. The BCG concluded that MODUs are covered by the insurance requirement under article 7 of the Bunkers Convention. The amount of insurance for all types of ship, falling under the definition of "ship" in the Bunkers Convention, including MODUs, should be calculated under LLMC 76, or a national system, but should in no case exceed the maximum LLMC 76 amount in force internationally. The BCG urged States to consider allowing MODUs the right to limitation of liability in accordance with LLMC 76 in national law, in order to ensure insurance coverage under the Bunkers Convention.

It was argued that the assumption that a MODU might fall under the Bunkers Convention, but not under the LLMC, was questionable, since the notion of "ship" used in the Bunkers Convention would be the same as the notion of "ship" used in the LLMC. Thus, if a MODU would qualify as a ship it would, in principle, fall under both the Bunkers Convention and the LLMC. It would, however, be questionable, whether all MODUs would qualify as a ship. Furthermore it was argued that the Bunkers Convention would only apply if the ship in question would use bunker oil for its operation or propulsion. This requirement, would, however, rarely be met by MODUs. Finally, it was pointed out that article 15(5)(b) of the LLMC expressly excluded floating platforms constructed for the purpose of exploring or exploiting the natural resources of the seabed or the subsoil thereof from its scope of application. Thus, it would not make sense to urge member States to allow the owner of MODUs to limit their liability in accordance with the LLMC.

The Committee agreed with the conclusions of the BCG.

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[748] United Nations, *Treaty Series*, vol. 973, p. 3 and, vol. 1956, p. 255.

[749] United Nations, *Treaty Series*, vol. 1456, p. 221.

c. The issuance of bunkers certificates to new buildings

The Committee considered the issues of when a hull (ship under construction) becomes a ship, as defined in the Bunkers Convention, i.e. when the hull is seagoing; and who is obliged to maintain insurance for the hull. With regard to the first issue, the BCG had agreed that a hull fitted with machinery or equipment constructed to use or contain bunker oil for its operation or propulsion will be seagoing when it performs restricted sea journeys. With regard to the second, the majority of the BCG was in favour of leaving the matter to national law. The BCG's conclusion was that, when a hull is registered, the registered owner should take out insurance when the hull is seagoing and the State of registry should issue the insurance certificate; and when there is no registered owner, the issue of determining the owner should be left to individual States. In all other cases it is left to national legislation. The Committee agreed with the conclusions of the BCG.

d. Procedure for accepting International Group of Protection and Indemnity Associations' (P&I Clubs) certificates and certificates from clubs outside the International Group of P&I Associations and insurance companies

The Committee noted the recommendation on the acceptance of Blue Cards, introduced by the BCG and the draft resolution, reflecting the majority view of the BCG members, to the effect that it would be useful to clarify the subject matter in a common understanding in the form of Guidelines, with criteria for States Parties to apply when considering the financial standing of insurance companies, other financial providers and P&I Clubs outside the International Group of P&I Associations.

The Committee noted the information provided by the P&I Clubs that without a widespread acceptance of Blue Cards issued in electronic format by the vast majority of States Parties, rather than original hard copy Blue Cards, the International Group Clubs, shipowners and the States Parties would have been faced with a system that would be close to unworkable, given the levels of bureaucracy that would need to be involved. Antiquated procedures create unnecessary workloads and bureaucracy for no added benefit and the P&I Clubs hoped that the approaches adopted by the vast majority of States Parties would be followed by all States in the near future. The Committee approved the draft Guidelines and decided that the BCG's conclusions, together with the Guidelines, should be disseminated by means of a Circular letter and posted on the IMO website.

e. Additional issues

The Committee approved the recommendation of the BCG to the effect that States Parties to the Convention should in general co-operate on matters relating to the issue of certificates, provide the information stipulated in the Bunkers Convention which was relevant for the issuance of insurance certificates, and give reasons for withdrawal or cancellation of insurance certificates. The Committee further agreed that the BCG had satisfied its terms of reference.

(v) *Consideration of a proposal to amend the limits of liability of the Protocol of 1996 to the Convention on Limitation of Liability for Maritime Claims, 1976 (LLMC 1996),[750] in accordance with article 8 of LLMC 1996*

The Committee noted the information provided by the delegation of Australia, discussing (a) timelines and other procedural requirements for amending the limits of liability of the Protocol of 1996 to amend the Convention on Limitation of Liability for Maritime Claims, 1976 (LLMC 96) under the Convention's tacit amendment procedure; (b) detailed indicative increases to ensure that limits reflect the increasing cost of bunker oil spills and the likely future level of cost; (c) several incidents and the amount of damage caused; and (d) changes in monetary values and possible effects of amendments on insurance costs. The Committee also noted the information provided by the observer delegation of the Comité Maritime International (CMI) regarding the historical background to the concept of limitation of liability for maritime claims, and the reasons for maintaining the ratios between personal injury claims and property damage; and by observer delegation of the International Group of P&I Associations (P&I Clubs), providing information and claims data on damage from bunker oil spills and other claims data to supplement the information provided at the Committee's last session.

There was wide agreement on the need to review the limits in LLMC 96 in order to ensure the availability of adequate compensation to victims and to apply the tacit amendment procedure to bring any revisions of the limits into force. It was also agreed that no decisions would be taken by the Committee at this stage, since a formal proposal for an amendment under article 8 had not yet been presented to the Committee. Instead a preliminary exchange of views took place, at the end of which the Committee was informed by the Secretariat that the Secretary-General expected to circulate the proposal in the near future.

(vi) *Piracy*

The Committee noted the information provided by the Secretariat on national legislation on piracy submitted in response to Circular letter No.2933; and the Secretariat's confirmed observation that this implementing legislation is not currently harmonized, and that this factor, coupled with the uneven incorporation into national law of the definition of piracy in the United Nations Convention on the Law of the Sea, 1982 (UNCLOS),[751] might have an adverse effect on the process of prosecution.

The Committee noted the information provided on the activities of Working Group 2 (WG2) of the Contact Group on Piracy off the Coast of Somalia; noted a summary of the report of the United Nations Secretary-General to the United Nations Security Council on possible options to further the aim of prosecuting and imprisoning persons responsible for acts of piracy and armed robbery at sea off the coast of Somalia; and requested the Secretariat to bring to WG2's attention the views, among others, that in the case of piracy off the coast of Somalia, the crisis had been provoked in the first place more by the unstable political situation on land than by the absence of viable legal mechanisms to fight

[750] *United Nations Juridical Yearbook 1996* (United Nations Publication, Sales No. 01.V.10), p. 357.

[751] United Nations, *Treaty Series,* vol. 1833, p. 3.

piracy. Therefore, the first priority was the stabilization of Somalia, which would take time; international efforts to stabilize the region might cost less than the proposed enforcement options. Regional action was strongly supported, including prosecution by States in the area where pirates are arrested. States in the region were seen as being able to deal most effectively with prosecutions in accordance with their national laws.

The Committee noted the information provided by the International Transport Workers' Federation (ITF) on a petition by nearly one million signatories, presented to the Secretary-General, calling for Governments to "End Piracy Now", and for more robust prosecution of pirates caught in the act of attacking merchant ships, with the suggestion that a circular be issued, inviting States to take action to ensure that captured pirates are prosecuted to the fullest extent, in accordance with robust laws.

The Committee noted the information provided by the Islamic Republic of Iran drawing attention to the concept of "private ends" in the definition of "piracy" in article 101 of UNCLOS and its relation to the description of unlawful acts in article 3.1(a) and (b) of the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 1988 (SUA).[752] As "private ends" is a subjective criterion, and there is no specific difference between the *actus reus* of the two mentioned offences, distinguishing between them would, in practice, be very difficult.

The Committee noted the information provided by the Secretariat on the Implementation of the Djibouti Code of Conduct; that the Djibouti Code of Conduct Project Implementation Unit, established in April 2010 and financed by the Djibouti Code Trust Fund, had made the significant progress towards equipping the three regional counter-piracy information sharing centres, which were expected to commence operations in the new year; and the construction of the regional training facility in Djibouti. The delivery of the first of a series of regional workshops on legislation and maritime law enforcement was held in Djibouti in September 2010 and further training events were programmed for early 2011.

The views were expressed that IMO's work should be coordinated with that of the United Nations Office on Drugs and Crime (UNODC) and the United Nations Office of Legal Affairs/Division for Ocean Affairs and the Law of the Sea (UN/DOALOS), particularly in connection with the establishment of an appropriate framework; the IMO Secretariat should continue to gather information on legislation and provide copies to DOALOS for incorporation in the United Nations database; the compilation and analysis of this national legislation should provide the basis for the preparation of model laws or guidelines, which would assist States planning new laws on piracy; a global strategy should be developed covering use of naval forces, more effective rules of engagement and co-operation between States to achieve prosecution; the development of a solid framework for the prosecution of pirates and the implementation of the Best Management Practice developed by the industry were crucial to end the scourge of piracy.

The Committee agreed that there was a need for all States to have a comprehensive legal regime to prosecute pirates, consistent with international law; that national-based solutions in the region, coupled with capacity-building in the countries involved, were a more certain way forward; that option one (the enhancement of United Nations assistance to build the capacity of States in the region to prosecute and imprison pirates) was the pre-

[752] *Ibid.*, vol. 1678, p. 201.

ferred option; that the views of the Committee with respect to options for the prosecution and imprisonment of pirates would be forwarded to WG2; and that the Secretariat should send national legislation received from member States to UN/DOALOS for inclusion in the United Nations database, and also to re-issue the Circular letter requesting Member States, which had not already done so, to provide information about their piracy laws.

(vii) *Technical co-operation activities*

The Committee noted a review by the Secretariat on the technical co-operation activities on maritime legislation from July 2009 to June 2010, the delivery of which was funded and implemented through the Integrated Technical Co-operation Programme (ITCP); and that national capacities were reinforced every year through the training imparted at the International Maritime Law Institute (IMLI), which remained at the apex of specialized post-graduate training for this discipline; that IMLI graduates were included under IMO's Roster of Experts and Consultants to provide the core expertise for short-term advisory and training missions; and that a list of the research activities carried out by IMLI students in the 2009–2010 academic year was available upon request.

In accordance with the provisions of Assembly resolution A.1006(25) on "The linkage between the Integrated Technical Co-operation Programme and the Millennium Development Goals", adopted by the twenty-fifth session of the Assembly in November 2007, Africa remained a priority region for IMO's technical co-operation programme. It was noted that 11 recipient countries out of a total of 12 were from the Africa region. The observation was made, with particular reference to Africa, that a long-term aim of the Programme should be to develop capacity building and self-sufficiency, for example in legislative drafting.

With regard to discussion of HNS Conference resolution 2, "Promotion of technical co-operation and assistance", the view was expressed that the Organization could be more proactive in promoting the HNS Protocol instead of awaiting member States' requests and also that a special programme might be developed through the Technical Co-operation Division and offered to the States.

The Committee decided that no modifications need be made in its medium-term goals or thematic priorities for the ITCP 2012–2013.

(viii) *Other business*

a. List of non-mandatory instruments related to the work of the Legal Committee

The Committee approved a draft Circular letter and a list of codes, recommendations, guidelines and other non-mandatory instruments related to the work of the Legal Committee, attaching (a) a list of solid bulk materials possessing chemical hazards which are mentioned by name in the IMSBC Code and also in the IMDG Code in effect in 1996; and (b) the list of solid bulk materials possessing chemical hazards which are mentioned by name in the IMSBC Code but not in the IMDG Code in effect in 1996. The Committee agreed that the Secretariat should keep the list up to date by means of circulars, as and when needed, containing amendments to the consolidated list, and make this available for electronic download, using the Global Integrated Shipping Information System (GISIS) facilities.

b. Proposal to add a new work programme item to address liability and compensation for oil pollution damage resulting from offshore oil exploration and exploitation

The Committee noted the information provided by the delegation of Indonesia, proposing a new work programme item to develop an international regime addressing liability and compensation in case of transboundary oil pollution damage caused by offshore exploration and exploitation activities, in the wake of the Montara well offshore oil platform accident. Most delegations that spoke expressed support, in principle, for the inclusion of an item in the Committee's work programme to consider liability and compensation issues for transboundary pollution damage resulting from offshore oil exploration and exploitation activities. It was noted that Strategic Direction 7.2 of the Organization's Strategic Plan, as currently worded, refers to "shipping", and therefore does not cover pollution caused by offshore oil exploration and exploitation activities. Accordingly, the Committee approved to recommend that the Council, and through it, the Assembly, revise Strategic Direction 7.2.

The Committee recommended that Strategic Direction 7.2 should be revised to read as follows (revisions italicized):

> "IMO will focus on reducing and eliminating any adverse impact by shipping *or by offshore oil exploration and exploitation activities* on the environment by developing effective measures for mitigating and responding to the impact on the environment caused by shipping incidents and operational pollution from ships *and liability and compensation issues connected with transboundary pollution damage resulting from offshore oil exploration and exploitation activities*".

(*c*) Entry into force of instruments and amendments thereto

(i) *Conventions and protocols*

Protocol of 2005[753] to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (SUA) and Protocol of 2005[754] to the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf[755]

With the deposit of an instrument of acceptance by the Republic of Nauru, on 29 April 2010, the entry into force requirements of both the Protocol of 2005 to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation and the Protocol of 2005 to the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf were met. Both Protocols, therefore, entered into force on 28 July 2010, in accordance with their respective articles 6 and 18.

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[753] International Maritime Organization, document LEG/CONF.15/21.

[754] LEG/CONF.15/22.

[755] United Nations, *Treaty Series*, vol. 1678, p. 201.

(ii) *Adoption of amendments to conventions and protocols*

a. 2010 amendments to the Annex of the Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships, 1973 (Revised MARPOL Annex III)[756]

These amendments were adopted by the Marine Environment Protection Committee on 1 October 2010, by resolution MEPC.193(61). At the time of their adoption, the Committee determined that the amendments shall be deemed to have been accepted on 1 July 2013 and shall enter into force on 1 January 2014 unless, prior to the former date, 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 their objections to the amendments. As at 31 December 2010, no such notification of objection had been received.

b. 2010 amendments to the Annex of the Protocol of 1997 to amend the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto (Revised form of Supplement to the IAPP Certificate)[757]

These amendments were adopted by the Marine Environment Protection Committee on 1 October 2010, by resolution MEPC.194(61). At the time of their adoption, the Committee determined that the amendments shall be deemed to have been accepted on 1 August 2011 and shall enter into force on 1 February 2012 unless, prior to the former date, 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 their objections to the amendments. As at 31 December 2010, no such notification of objection had been received.

c. 2010 amendments (addition of a new chapter 9 to MARPOL Annex I) to the Annex of the Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships, 1973

These amendments were adopted by the Marine Environment Protection Committee on 26 March 2010, by resolution MEPC.189(60). At the time of their adoption, the Committee determined that the amendments shall be deemed to have been accepted on 1 February 2011 and shall enter into force on 1 August 2011 unless, prior to 1 February 2011, 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 their objections to the amendments. As at 31 December 2010, no such notification of objection had been received.

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[756] *Ibid.*, vol. 1340, p. 61.

[757] *Ibid.*, vol. 2057, p. 68.

d. 2010 amendments (North American Emissions Control Area) to the Annex of the Protocol of 1997 to amend the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto

These amendments were adopted by the Marine Environment Protection Committee on 26 March 2010, by resolution MEPC.190(60). At the time of their adoption, the Committee determined that the amendments shall be deemed to have been accepted on 1 February 2011 and shall enter into force on 1 August 2011 unless, prior to 1 February 2011, 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 their objections to the amendments. As at 31 December 2010, no such notification of objection had been received.

e. International Goal-based Ship Construction Standards for Bulk Carriers and Oil Tankers (under SOLAS 1974)

These International Goal-based Ship Construction Standards for Bulk Carriers and Oil Tankers were adopted by the Maritime Safety Committee on 20 May 2010, by resolution MSC.287(87). At the time of their adoption, the Maritime Safety Committee determined that they will take effect on 1 January 2012, upon the entry into force of amendments to regulation II-1/3-10 of the International Convention for the Safety of Life at Sea, 1974,[758] adopted by the Committee under resolution MSC.290(87).

f. Performance Standard for Protective Coatings for Cargo Oil Tanks of Crude Oil Tankers (under the International Convention for the Safety of Life at Sea (SOLAS) 1974)

This Performance Standard was adopted by the Maritime Safety Committee on 14 May 2010, by resolution MSC.288(87). At the time of its adoption, the Maritime Safety Committee determined that it will take effect on 1 January 2012, upon the entry into force of the amendments to the International Convention for the Safety of Life at Sea, 1974, (chapter II-1, new regulation 3–11), which were adopted by the Committee under resolution MSC.291(87) on 21 May 2010.

g. Performance Standard for Protective Coatings for Alternative Means of Corrosion Protection for Cargo Oil Tanks of Crude Oil Tankers (under SOLAS 1974)

This Performance Standard was adopted by the Maritime Safety Committee on 14 May 2010, by resolution MSC.289(87). At the time of its adoption, the Maritime Safety Committee determined that it will take effect on 1 January 2012, upon the entry into force of the amendments to the International Convention for the Safety of Life at Sea, 1974, (chapter II-1, new regulation 3–11) which were adopted by the Committee under resolution MSC.291(87) on 21 May 2010.

h. 2010 amendments (chapter II-1) to SOLAS 1974

These amendments were adopted by the Maritime Safety Committee on 20 May 2010, by resolution MSC.290(87). At the time of their adoption, the Committee determined that

[758] *Ibid.*, vol. 1184, p. 277.

the amendments shall be deemed to have been accepted on 1 July 2011 and shall enter into force on 1 January 2012 unless, prior to 1 July 2011, more than one third of the Contracting Governments to SOLAS 1974, or Contracting Governments, the combined merchant fleets of which constitute more than 50 per cent of the gross tonnage of the world's merchant fleet, have notified their objections to the amendments. As at 31 December 2010, no such notification of objection had been received.

i. 2010 amendments (chapters II-1 and II-2) to SOLAS 1974

These amendments were adopted by the Maritime Safety Committee on 21 May 2010, by resolution MSC.291(87). At the time of their adoption, the Committee determined that the amendments shall be deemed to have been accepted on 1 July 2011 and shall enter into force on 1 January 2012 unless, prior to 1 July 2011, more than one third of the Contracting Governments to SOLAS 1974, or Contracting Governments, the combined merchant fleets of which constitute more than 50 per cent of the gross tonnage of the world's merchant fleet, have notified their objections to the amendments. As at 31 December 2010, no such notification of objection had been received.

j. 2010 amendments to the International Code for Fire Safety Systems (FSS Code) (under SOLAS 1974)

These amendments were adopted by the Maritime Safety Committee on 21 May 2010, by resolution MSC.292(87). At the time of their adoption, the Committee determined that the amendments shall be deemed to have been accepted on 1 July 2011 and shall enter into force on 1 January 2012 unless, prior to 1 July 2011, more than one third of the Contracting Governments to SOLAS 1974, or Contracting Governments, the combined merchant fleets of which constitute more than 50 per cent of the gross tonnage of the world's merchant fleet, have notified their objections to the amendments. As at 31 December 2010, no such notification of objection had been received.

k. 2010 amendments to the International Life-Saving Appliance (LSA) Code (under SOLAS 1974)

These amendments were adopted by the Maritime Safety Committee on 21 May 2010, by resolution MSC.293(87). At the time of their adoption, the Committee determined that the amendments shall be deemed to have been accepted on 1 July 2011 and shall enter into force on 1 January 2012 unless, prior to 1 July 2011, more than one third of the Contracting Governments to SOLAS 1974, or Contracting Governments, the combined merchant fleets of which constitute more than 50 per cent of the gross tonnage of the world's merchant fleet, have notified their objections to the amendments. As at 31 December 2010, no such notification of objection had been received.

1. 2010 amendments to the International Maritime Dangerous Goods (IMDG) Code (under SOLAS 1974)

These amendments were adopted by the Maritime Safety Committee on 21 May 2010, by resolution MSC.294(87). At the time of their adoption, the Committee determined that the amendments shall be deemed to have been accepted on 1 July 2011 and shall enter into

force on 1 January 2012 unless, prior to 1 July 2011, more than one third of the Contracting Governments to SOLAS 1974, or Contracting Governments, the combined merchant fleets of which constitute more than 50 per cent of the gross tonnage of the world's merchant fleet, have notified their objections to the amendments. As at 31 December 2010, no such notification of objection had been received.

m. 2010 adoption of the International Code for Application of Fire Test Procedures (FTP Code)

The FTP Code was adopted by the Maritime Safety Committee on 3 December 2010, by resolution MSC.307(88). The Committee noted that under the amendments to chapter II-2 of SOLAS 1974, amendments to the 2010 FTP Code shall be adopted, brought into force and take effect in accordance with the provisions of article VIII of the SOLAS 1974, concerning the amendment procedure applicable to the annex to SOLAS 1974 other than chapter I.

n. 2010 amendments to SOLAS 1974, as amended

These amendments were adopted by the Maritime Safety Committee on 3 December 2010, by resolution MSC.308 (88). At the time of their adoption, the Committee determined that, in accordance with article VIII(b)(vi)(2)(bb) of the Convention, the amendments shall be deemed to have been accepted on 1 January 2012, unless, prior to that date, more than one third of the Contracting Governments to the Convention or Contracting Governments the combined merchant fleets of which constitute not less than 50 per cent of the gross tonnage of the world's merchant fleet, have notified their objections to the amendments. As at 31 December 2010, no such notification of objection had been received.

o. 2010 amendments to the Protocol of 1988 relating to the International Convention for the Safety of Life at Sea, 1974[759]

These amendments were adopted by the Maritime Safety Committee on 3 December 2010, by resolution MSC.309 (88). At the time of their adoption, the Committee determined that the amendments shall be deemed to have been accepted on 1 January 2012, unless, prior to that date, more than one third of the parties to the 1988 SOLAS Protocol or parties the combined merchant fleets of which constitute not less than 50 per cent of the gross tonnage of the world's merchant fleet, have notified their objections to the amendments. As at 31 December 2010, no such notification of objection had been received.

p. 2010 amendments to the International Convention for Safe Containers (CSC), 1972[760]

These amendments were adopted by the Maritime Safety Committee on 3 December 2010, by resolution MSC.310 (88). At the time of their adoption, the Committee determined that the amendments shall enter into force on 1 January 2012 unless, prior to 1 July 2011, five or more of the Contracting Parties notify the Secretary-General of their objection to the amendments. As at 31 December 2010, no such notification of objection had been received.

[759] International Maritime Organization, document IMO (092)/SH8C (1988).

[760] United Nations, *Treaty Series*, vol. 1064, p. 25.

q. 2010 amendments to the International Code for Fire Safety Systems (FSS Code) under SOLAS 1974)

These amendments were adopted by the Maritime Safety Committee on 3 December 2010, by resolution MSC.311 (88). At the time of their adoption, the Committee determined that the amendments shall be deemed to have been accepted on 1 January 2012, unless, prior to that date, more than one third of the Contracting Governments to the Convention or Contracting Governments the combined merchant fleets of which constitute not less than 50 per cent of the gross tonnage of the world's merchant fleet, have notified their objections to the amendments. As at 31 December 2010, no such notification of objection had been received.

r. 2010 Manila amendments to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978[761] and the Seafarers' Training, Certification and Watchkeeping (STCW) Code

The 2010 Conference of Parties to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, held in Manila, the Philippines, from 21 to 25 June 2010, adopted, by resolutions 1 and 2 respectively, amendments to the annex to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978; and to the Seafarers' Training, Certification and Watchkeeping Code (the Manila amendments).

Both sets of amendments shall, in accordance with article XII(1)(a)(vii) of the Convention, be deemed to have been accepted on 1 July 2011, unless, prior to that date, more than one third of parties to the Convention, or parties, the combined merchant fleets of which constitute not less than 50 per cent of the gross tonnage of the world's merchant shipping of ships of 100 gross register tons or more, have notified to the Secretary-General that they object to the amendments. Following their deemed acceptance, the amendments will enter into force on 1 January 2012, in accordance with article XII(1)(a)(ix) of the Convention.

6. Universal Postal Union

(*a*) General review of the legal activities of the Universal Postal Union (UPU)

The UPU Acts adopted by the 2008 Congress (Additional Protocols to the UPU Constitution[762] and General Regulations,[763] as well as the new Universal Postal Convention[764] and the new Postal Payment Services Agreement[765]) entered into force on 1 January 2010.

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[761] *Ibid*., vol. 1361, p. 75.

[762] Eighth Additional Protocol to the Constitution of the Universal Postal Union, adopted on 12 August 2008 in Geneva. Available from http://www.upu.int/en/the-upu/acts/acts-in-force-indefinitely.html.

[763] First Additional Protocol to the General Regulations of the Universal Postal Union, adopted on 12 August 2008 in Geneva. Available from http://www.upu.int/en/the-upu/acts/acts-in-force-indefinitely.html.

[764] Universal Postal Convention, adopted on 12 August 2008 in Geneva. Available from http://www.upu.int/en/the-upu/acts/acts-in-force-indefinitely.html.

[765] Postal Payment Services Agreement, adopted on 12 August 2008 in Geneva. Available from http://www.upu.int/en/the-upu/acts/acts-in-force-indefinitely.html.

The UPU Postal Operations Council (POC) approved the model agreement for postal payment services at its session in April 2010 (resolution CEP 13/2010).

At the same POC session, the UPU signed a memorandum of understanding with the International Organization for Migration (IOM), aimed at strengthening cooperation between the two organizations in the fields of postal payment services (particularly remittance services) and migration.

In June 2010, the UPU registered with the European Commission's Register of Interest Representatives, thereby enabling it to participate in European Commission consultations on subjects within its purview (customs measures and financial services in 2010). The aim is to ensure compliance with the UPU treaties.

Between 26 July and 16 August 2010, the first financial disclosure statements and declarations of interest, which certain UPU staff members are required to submit each year, were assessed by the UPU Ethics Office in collaboration with an external analyst.

In November 2010, the UPU and Eurogiro concluded an agreement governing the interconnection between their respective networks for the operation of postal payment services by Eurogiro-customer designated operators and UPU electronic network users.

A memorandum of understanding between the UPU and GS1, an international not-for-profit association dedicated to the design and implementation of global supply chain standards, was signed in December 2010, the main aim of which is to foster cooperation between the two organizations in their standardization activities and to define a joint programme of standards for the postal sector.

(*b*) Adoption of new emblem

On 30 September 2010, the new UPU emblem was registered with the World Intellectual Property Organization (WIPO). The emblem is protected under article 6*ter* of the Paris Convention on the Protection of Industrial Property.[766] A reproduction is printed below:

7. World Intellectual Property Organization

In the year 2010, 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 Member States for development activities; (ii) intellectual property treaty formulation and norm-setting; and (iii) the international registration of intellectual property rights.

[766] United Nations, *Treaty Series*, vol. 828, p. 305.

(*a*) Cooperation with Member States for development activities

In 2010, WIPO Technical Assistance and Capacity-Building (TACB) activities continued to be oriented towards the integration of Intellectual Property (IP) in national development policies 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) and non-governmental organizations (NGOs) and in particular with developing countries and least-developed countries (LDCs), with which an intense cooperation has been tailored in order to respond to the diverse and specific needs in important IP areas.

During 2010, substantive legislative and technical assistance was provided in support of national IP capacity-building in areas such as: IP infrastructure and exploitation of IP systems; information technology (IT); human resources development; Genetic Resources, Traditional Knowledge and Folklore (TKF) and protection of traditional cultural expressions (TCEs); Small and Medium-Sized Enterprises (SMEs); and the establishment of collective management societies.

The Committee on Development and Intellectual Property (CDIP), composed of WIPO Member States and open to the participation of all accredited IGOs and NGOs, submitted to the WIPO General Assembly in 2010 a report on its fourth and fifth sessions held from November 16 to 20, 2009, and from April 26 to 30, 2010, during which (i) the activities to be implemented under the adopted recommendations were reviewed and discussed, and (ii) the Coordination Mechanisms and Monitoring, Assessing and Reporting Modalities were approved.

(*b*) Norm-setting activities

One of the principal tasks of WIPO is to promote the progressive development of IP laws, standards and practices among its Member States through the facilitation of international approaches in the protection and administration of intellectual property rights. Hence, the three WIPO Standing Committees on legal matters (one dealing with copyright and related rights, one dealing with patents and one dealing with trademarks, industrial designs and geographical indications) help Member States to centralize the discussions, coordinate efforts and establish priorities in these areas.

(i) *Standing Committee on the Law of Patents (SCP)*

At its fifteenth session held in October 2010, the SCP decided to include the following issues in its future work: (i) exceptions and limitations to patent rights; (ii) quality of patents, including opposition systems; (iii) patents and health; (iv) client-patent advisor privilege; and (v) transfer of technology. The Committee also agreed that the non-exhaustive list of issues first identified at its June 2008 meeting will remain open for further elaboration and discussion at its next session, and that four more issues will be included in the list: (i) impact of the patent system on developing countries and LDCs; (ii) patents and food security; (iii) strategic use of patents in business; and (iv) enhancing IT infrastructure for patent processing.

(ii) *Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications (SCT)*

At its meeting held in November 2010, the SCT recognized the progress it made on work concerning industrial design law and practice, in addition to matters relating to the internet and trademarks. The SCT also discussed the expansion of the Domain Name System (DNS) planned by the Internet Corporation for Assigned Names and Numbers (ICANN). Moreover, the SCT supported WIPO's contribution to policy making in the area of internet domain names. On the basis of the responses received to a questionnaire prepared by the Secretariat, the SCT considered the issue of the use of names of States as trademarks and decided to continue its work on the basis of a draft reference document for consideration at its next session.

(iii) *Standing Committee on Copyright and Related Rights (SCCR)*

During its meeting held in November 2010, the SCCR took stock of the status of discussions regarding exceptions and limitations to copyright law, the rights of broadcasting organizations and the rights of performers in their audiovisual performances and agreed on a road map for further negotiations. The SCCR agreed on a work plan relating to limitations and exceptions and recognized that progress in certain areas was more advanced. It also continued discussions on the protection of audiovisual performances and noted that the 19 articles provisionally adopted in 2000 were a good basis for further talks. A proposal for a treaty was also submitted by some Member States and the SCCR invited all Member States to submit, by January 31, 2011 written proposals addressing the outstanding issues from the 2000 Diplomatic Conference as well as on any additional or alternative elements for a draft treaty. The SCCR also reaffirmed its commitment to continue work, on a signal-based approach, towards developing an international treaty to update the protection of broadcasting and cable casting organizations in the traditional sense.

(*c*) International registration activities

(i) *Patents*

According to provisional data for 2010, the Secretariat recorded 132,248 international patent applications under the Patent Cooperation Treaty (PCT).[767] The leading country of origin by number of international applications filed was the United States of America (with 36,751 applications) followed by Japan (with 26,369 applications).

At its forty-first (twenty-fourth extraordinary) session held in Geneva from September 20 to 29, 2010, the Assembly of the PCT Union adopted amendments to the Regulations under the PCT with effect from July 1, 2011. The amendments address issues such as international publication; languages and translation of amendments and letters; copy of the written opinion by the International Searching Authority and of amendments under Article 19 for the International Preliminary Examining Authority; and international preliminary report on patentability by the International Preliminary Examining Authority.

[767] United Nations, *Treaty Series*, vol. 1160, p. 231.

(ii) *Trademarks*

According to data for 2010, the Secretariat recorded 33,703 international registrations of trademarks under the Madrid system.

During the year under review, Israel and Kazakhstan (2) acceded to the Madrid Protocol, bringing the total number of Contracting Parties to 83.

(iii) *Industrial designs*

In 2010, the Secretariat recorded 2,018 registrations of industrial designs under The Hague system. The number of designs contained in the respective registrations was 9,984.

In 2010, Norway and Azerbaijan (2) acceded to the Geneva Act of The Hague Agreement, bringing the total number of Contracting Parties to 57.

(iv) *Appellations of origin*

According to data for 2010, the Secretariat recorded one new appellation of origin in the International Register, which brought to 818 the total number of appellations of origin in force under the 1967 Lisbon Agreement for the Protection of Appellations of Origin and their International Registration (Lisbon Agreement).[768]

In 2010, the former Yugoslav Republic of Macedonia (1) acceded to the Lisbon Agreement, bringing the total number of Contracting Parties to 27.

(*d*) Intellectual property and global issues

(i) *Genetic resources, traditional knowledge and folklore*

The Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC) at its sixteenth and seventeenth sessions held in May and December 2010, reviewed the progress made on its substantive agenda with the contribution of the WIPO Voluntary Fund and the further strengthening of the indigenous consultative forum and indigenous panels which form part of the IGC, as well as the participation of various intergovernmental organizations. The IGC also agreed on arrangements for intersessional working groups which will support and facilitate the IGC's negotiations by providing legal and technical advice and analysis. In a session held in December 2010, the IGC defined the work to be undertaken by the two intersessional working groups on traditional knowledge (TK) and genetic resources (GRs). The IGC has a mandate to conduct "text-based negotiations" in order to reach an agreement on an international legal instrument (or instruments) that ensures the effective protection of TK, traditional cultural expressions (TCEs) and GRs.

[768] *Ibid.*, vol. 923, p. 214.

(ii) *The WIPO Arbitration and Mediation Center*

In 2010, trademark holders filed a record of 2,696 complaints with the WIPO Arbitration and Mediation Center ("Center") under procedures based on 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. The Center also continued to advise county code Top Level Domains (ccTLDs) on registration conditions and dispute resolution procedures. In 2010, the ccTLD registries .BR (Brazil), .SO (Somalia), and .TJ (Tajikistan) designated the Center to provide domain name dispute resolution services, increasing the number of ccTLDs nominating the Center to 65.

The WIPO Center is now providing domain name dispute resolution services for both .AE and .تارامإ (dotEmarat). .تارامإ (dotEmarat) is an Internationalized Country Code Top-Level Domain (IDN ccTLD) designated for operation by the United Arab Emirates, and results from ICANN's IDN ccTLD Fast Track Process which is designed to introduce into the Domain Name System Internet extensions (top-level domains) corresponding to a meaningful representation of a country or territory name in non-Latin (or non-ASCII) script.

In May 2010, the Center opened 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 in Singapore under the WIPO Rules. The Center also developed the WIPO Mediation and Expedited Arbitration Rules for Film and Media specifically tailored to resolve potential disputes in the film and media sectors. Developed in cooperation with industry experts, these new rules, as well as the special model contract clauses and submission agreements, are particularly appropriate for international film and media transactions where parties require an expedited arbitration process and mediation.

(iii) *New members and new accessions*

In 2010, 20 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 2010.

- Convention Establishing the World Intellectual Property Organization, 1967:[769] 0 (184);
- Paris Convention for the Protection of Industrial Property, 1967: 0 (173);
- Berne Convention for the Protection of Literary and Artistic Works, 1967:[770] 0 (164);
- Patent Cooperation Treaty, 1970: 0 (142);
- Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks, 1989:[771] 2 (83);

[769] *Ibid.*, vol. 828, p. 4.

[770] *Ibid.*, vol. 828, p. 223.

[771] Available from http://www.wipo.int/madrid/en/legal_texts/trtdocs_w0016.html.

- Trademark Law Treaty, 1994:[772] 0 (45);
- Patent Law Treaty, 2000:[773] 5 (27);
- Madrid Agreement for the Repression of False and Deceptive Indications of Source on Goods, 1967:[774] 0 (35);
- Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks, 1967:[775] 0 (83);
- Locarno Agreement Establishing an International Classification of the Figurative Elements of Marks, 1968:[776] 0 (51);
- Vienna Agreement Establishing an International Classification of the Figurative Elements of Marks, 1973:[777] 1 (28);
- WIPO Copyright Treaty, 1996:[778] 0 (88);
- WIPO Performances and Phonograms Treaty, 1996:[779] 1 (87);
- Singapore Treaty on the Law of Trademarks, 2006:[780] 6 (23);
- Lisbon Agreement for the Protection of Appellations of Origin and their International Registration, 1967:[781] 1 (27);
- Strasbourg Agreement Concerning the International Patent Classification, 1971:[782] 0 (61);
- Nairobi Treaty on the Protection of the Olympic Symbol, 1981:[783] 1 (48);
- Budapest Treaty on the International Recognition of the Deposit of Micro-organisms for the Purposes of Patent Procedure, 1977:[784] 1 (73);
- Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, 1961:[785] 0 (91);
- Geneva Act of the Hague Agreement Concerning the International Registration of Industrial Designs, 1999: 2 (57);
- Brussels Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite, 1974:[786] 0 (34);

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[772] United Nations, *Treaty Series*, vol. 2037, p. 35.

[773] *Ibid.*, vol. 2340, p. 3.

[774] *Ibid.*, vol. 828, p. 163.

[775] *Ibid.*, vol. 828, p. 192.

[776] *Ibid.*, vol. 828, p. 437.

[777] *Ibid.*, vol. 1863, p. 317.

[778] *Ibid.*, vol. 2186, p. 121.

[779] *Ibid.*, vol. 2186, p. 203.

[780] Available from http://www.wipo.int/treaties/en/ip/singapore/singapore_treaty.html.

[781] United Nations, *Treaty Series*, vol. 923, p. 214.

[782] *Ibid.*, vol. 1160, p. 483.

[783] *Ibid.*, vol. 1863, p. 367.

[784] *Ibid.*, vol. 1861, p. 362.

[785] *Ibid.*, vol. 496, p. 43.

[786] *Ibid.*, vol. 1144, p. 3.

– Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms, 1971:[787] 0 (77); and

– International Convention for the Protection of New Varieties of Plants (UPOV), 1978:[788] 0 (68).

8. International Fund for Agricultural Development

(*a*) Membership

Membership in the International Fund for Agricultural Development (IFAD) is open to any State that is a Member of the United Nations, any of its specialized agencies or the International Atomic Energy Agency. Throughout 2010, IFAD had 166 Member States.

(*b*) Partnership agreements and memorandum of understanding

(i) *Cofinancing Agreement with the Islamic Development Bank*

Further to a Memorandum of Understanding signed in 1979, IFAD and the Islamic Development Bank entered, on 13 February 2010, into a Framework Cofinancing Agreement, whereby the two institutions established the modalities of their programmatic financing collaboration.

(ii) *Memorandum of Understanding between IFAD and the Japan International Cooperation Agency*

On 19 October 2010, IFAD entered into a Memorandum of Understanding with the Japan International Cooperation Agency (JICA). The purpose of the Memorandum was to provide a framework for enhancing collaboration on activities of common interest, such as the financing of country-level investments and capacity strengthening, policy dialogue and knowledge management, in addition to dialogue and advocacy at the country, regional and international levels. The text of the Memorandum was approved by the Executive Board at its 101st session (14–16 December 2010).[789]

(iii) *Transfer Agreement under the Global Agriculture and Food Security Program Trust Fund*

On 13 November 2010, IFAD entered into a Transfer Agreement with the Trust Fund for the Global Agriculture and Food Security Program. Following this Agreement, IFAD may, as the Supervising Entity, request the Trust Fund's Trustee, the International Bank for Development and Reconstruction, to transfer funds in order to finance eligible projects.

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[787] *Ibid.*, vol. 866, p. 67.

[788] *Ibid.*, vol. 1861, p. 282.

[789] EB 2010/101/R.56. Available from: http://www.ifad.org/gbdocs/eb/101/e/EB-2010–101-R-56.pdf.

(iv) *Framework Agreement with OPEC Fund for International Development*

On 3 December 2010, an Agreement was signed between IFAD and the OPEC Fund for International Development, setting the operational framework for the enhancement of the ongoing cooperation between two institutions. The Agreement defines the nature and scope of their joint operations and outlines a series of operational modalities to govern their joint programme for the period 2011–2013. The text of the Agreement will be presented to the Executive Board for approval at its 102nd session (10–12 May 2011).[790]

(v) *Administrative Agreement with the Kingdom of Spain*

On 22 December 2010, the President of IFAD, in its capacity as Trustee of the Spanish Food Security Cofinancing Facility Trust Fund, entered into an Administrative Agreement with the Government of Spain. The Agreement establishes the procedures governing the cooperation between Spain and the Trust Fund relating to the administration and operation of the Trust Fund.

(vi) *Borrowing Agreement with the Kingdom of Spain*

Following the above-mentioned Administrative Agreement, the President of IFAD, in its capacity as Trustee of the Spanish Food Security Cofinancing Facility Trust Fund, signed a Borrowing Agreement with the Government of Spain on 28 December 2010. Through this Agreement, Spain extended a loan to the Trust Fund to complement and reinforce the programme of work of IFAD.

(*c*) Other legal activities

(i) *Establishment of the Spanish Food Security Cofinancing Facility Trust Fund*

The Executive Board approved, at its 100th session (15–17 September 2010), the Instrument establishing the Spanish Food Security Co-financing Facility Trust Fund.[791] The Trust Fund, managed by IFAD, will receive the funds provided by Spain following the agreements signed in December 2010.

(ii) *Revision of IFAD policy on the disclosure of documents*

Following the agreement reached at the consultation on the Eighth Replenishment of IFAD's resources, management recommended to align the Disclosure Policy with practice of other international financial institutions by adopting the principle of "full disclosure".

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[790] EB 2011/102/R.44, available from http://www.ifad.org/gbdocs/eb/102/e/EB-2011–102-R-44.pdf.

[791] EB 2011/100/R.29/Rev.2, available from: http://www.ifad.org/gbdocs/eb/100/e/EB-2010–100-R-29-Rev-2.pdf.

The new policy was approved by the Executive Board at its 100th session and will be effective from 1 January 2012.[792]

(iii) *Guidelines on dealing with* de facto *Governments*

During its 100th session, the Executive Board approved the Guidelines on dealing with *de facto* Governments. The purpose of these Guidelines is to provide additional guidance as to whether the Fund should extend new project financing for Member States whose governments have changed without an orderly transition of power.[793]

9. United Nations Industrial Development Organization

(*a*) Agreements and other arrangements

(i) *Agreements with States*[794]

Austria

Agreement between the United Nations Industrial Development Organization and the Republic of Austria on Social Security, signed on 23 April 2010.

Brazil

Agreement between the United Nations Industrial Development Organization and the Government of the Federative Republic of Brazil regarding settlement of outstanding assessed contributions under a payment plan, signed on 28 July 2010.

China

Joint declaration between the United Nations Industrial Development Organization, Shanghai Municipal Commission of Economy and Informatization, Yangpu District Government of Shanghai and China International Center for Economic and Technical Exchanges (CIETE) regarding the establishment of the international high-tech innovation development base in Shanghai, signed on 23 May 2010.

Colombia

Trust fund agreement between the United Nations Industrial Development Organization and the Corporación Autónoma Regional para el Desarrollo Sostenible de Chocó—Codechocó regarding the implementation of a project in Colombia entitled "UNIDO global mercury project-2 (GMP-2), introduction of cleaner artisanal gold mining and extraction technologies", signed on 23 November 2010.

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[792] EB 2010/100/R.3/Rev.1, available from http://www.ifad.org/gbdocs/eb/100/e/EB-2010-I00-R-3-Rev-1.pdf.

[793] EB/2010/100/R.4/Rev.2, available from http://www.ifad.org/gbdocs/eb/100/e/EB-2010–100-R-4-Rev-2.pdf.

[794] Including governments and regional governments, government agencies and provinces.

Trust fund agreement between the United Nations Industrial Development Organization and the Corporación Autónoma Regional del Centro de Antioquia—Corantioquia regarding the implementation of a project in Colombia entitled "UNIDO global mercury project-2 (GMP-2), introduction of cleaner artisanal gold mining and extraction technologies", signed on 23 November 2010.

Colombia and the United Nations Environment Programme (UNEP)

Implementation agreement between the United Nations Industrial Development Organization, the United Nations Environment Programme and the Ministry of Environment, Housing and Territorial Development of Colombia regarding the implementation of a project entitled "Strengthening national governance for the Strategic Approach to International Chemicals Management (SAICM) implementation in Colombia", signed on 16 and 18 March, and 7 and 28 May 2010.

Côte d'Ivoire and Japan

Memorandum of understanding between the United Nations Industrial Development Organization, the Government of Côte d'Ivoire and the Embassy of Japan in Côte d'Ivoire regarding the implementation of a project entitled "Youth training for post-conflict recovery and peacebuilding", signed on 2 August 2010.

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 "Strengthening the local production of essential medicines in developing countries through advisory and capacity-building support", signed on 19 October 2010.

India

Trust fund agreement between the United Nations Industrial Development Organization and the Department of Chemicals and Petrochemicals, Ministry of Chemicals and Fertilizers, Government of India regarding the implementation of a project entitled "National programme for developing plastic manufacturing industry in India", signed on 26 February 2010.

Italy

Agreement between the United Nations Industrial Development Organization and the Directorate-General for Development Cooperation of the Italian Ministry of Foreign Affairs regarding the implementation of a project in Iraq entitled "Investment promotion for Iraq", signed on 18 February 2010.

Agreement between the United Nations Industrial Development Organization and the Government of Italy regarding the implementation of a project in Lebanon entitled "Community empowerment and livelihoods enhancement project", signed on 7 October 2010.

Agreement between the United Nations Industrial Development Organization and the Directorate-General for Development Cooperation of the Italian Ministry of Foreign

Affairs regarding the implementation of a project in Iraq entitled "Enhancing investments to Iraq through industrial zone development", signed on 2 December 2010.

Japan

Memorandum of understanding on cooperation between the United Nations Industrial Development Organization and the City of Kitakyushu, Japan, signed on 14 June 2010.

Exchange of letters constituting an agreement between the United Nations Industrial Development Organization and the Government of Japan regarding the programme for youth training for post-conflict recovery and peacebuilding in the Republic of Côte d'Ivoire, signed on 2 August 2010.

Exchange of letters constituting an agreement between the United Nations Industrial Development Organization and the Government of Japan regarding the implementation of a project in Afghanistan entitled "Social reintegration of vulnerable groups in flood-affected areas in Nangarhar through skill development and income generation", signed on 30 November and 10 December 2010.

Exchange of letters constituting an agreement between the United Nations Industrial Development Organization and the Government of Japan regarding the implementation of a project entitled "Response to humanitarian crisis in Africa", signed on 3 and 10 December 2010.

Exchange of letters extending the agreement between the United Nations Industrial Development Organization and the Government of Japan concerning the contribution by the Government of Japan to the UNIDO Investment and Technology Promotion Office Tokyo service aimed at promoting industrial investment in developing countries from 1 January 2011 to 31 December 2013, signed on 14 December 2010.

Luxembourg

Agreement between the United Nations Industrial Development Organization and the Government of Luxembourg with regard to a Special Purpose Contribution to the Industrial Development Fund for the implementation of a project in Senegal entitled "Development of local production systems and employment integration of young people completing vocational and technical training in the Louga, St. Louis and Matam regions", signed on 23 and 27 December 2010.

Montenegro

Basic cooperation agreement between the United Nations Industrial Development Organization and the Government of the Republic of Montenegro, signed on 25 October 2010.

Mozambique and the European Community (EC)

Addendum No. 2 to the European Community contribution agreement between the United Nations Industrial Development Organization, the European Community and the Government of Mozambique regarding the implementation of a project entitled "Business environment support and trade facilitation project", signed on 17 and 20 December 2010.

New Zealand

Letter of amendment to the agreement between the United Nations Industrial Development Organization and the Government of New Zealand with regard to a Special Purpose Contribution to the Industrial Development Fund in relation to a project in Indonesia entitled "Advisory services for seismic isolation of hospital buildings using natural rubber bearings", signed on 16 and 21 September 2010.

Nigeria

Memorandum of agreement between the United Nations Industrial Development Organization and the National Productivity Centre of the Federal Government of Nigeria, signed on 26 November 2010.

Memorandum of agreement between the United Nations Industrial Development Organization and the Raw Materials Research and Development Council of the Federal Government of Nigeria, signed on 7 December 2010.

Memorandum of agreement between the United Nations Industrial Development Organization and the Nigerian Export Promotion Council of the Federal Government of Nigeria, signed on 10 December 2010.

Norway

Administrative agreement for project funding between the United Nations Industrial Development Organization and the Norwegian Agency for Development Cooperation (Norad) regarding the implementation of a project in Bangladesh "Better work and standards programme (BEST)", signed on 18 December 2009 and 8 January 2010.

Administrative agreement for project funding between the United Nations Industrial Development Organization and the Norwegian Agency for Development Cooperation (Norad) regarding the institutional cooperation between Norwegian Accreditation (NA) and the Bangladesh Accreditation Board (BAB), signed on 30 June and 26 July 2010.

Republic of Korea

Trust fund agreement between the United Nations Industrial Development Organization and the Korea International Cooperation Agency (KOICA) regarding the implementation of a project entitled "Transfer of environmentally sound technologies in Cambodia", signed on 28 December 2010.

Russian Federation

Memorandum of understanding between the United Nations Industrial Development Organization and the Federal Service for Supervision of Natural Resources Use of the Russian Federation (Rosprirodnadzor), signed on 12 February 2010.

Senegal

Agreement between the United Nations Industrial Development Organization and the Upgrading Office of Senegal, signed on 29 June and 9 July 2010.

Somalia

Memorandum of understanding between the Honorable Minister for Industry of the Transitional Federal Government of the Somali Republic, Mr. Adbirahman Jama Abdalla and the Director-General of the United Nations Industrial Development Organization, Mr. Kandeh K.Yumkella, signed on 17 February and 8 March 2010.

South Africa

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 "Subcontracting and partnership exchange programme (programme for supplier profiling, benchmarking and buyer match-making)", signed on 10 August and 1 September 2010.

Sweden

Agreement between the United Nations Industrial Development Organization and Sweden regarding the implementation of a project entitled "Support the implementation of the regional Arab standardization strategy with focus on the regional coordination on accreditation", signed on 10 and 14 December 2010.

Switzerland

Letter of agreement between the United Nations Industrial Development Organization and the State Secretariat for Economic Affairs (SECO) regarding the implementation of a project in Viet Nam entitled "US/VIE/10/002—Technical assistance to business registration reform in Viet Nam (phase A, module II and phase B)", signed on 29 October 2010.

Letter of agreement between the United Nations Industrial Development Organization and the State Secretariat for Economic Affairs (SECO) regarding the implementation of a project in Egypt entitled "US/EGY/10/005—upgrading the medicinal and aromatic plants value chain—access to export markets", signed on 29 October 2010.

Turkey

Exchange of letters extending the agreement between the United Nations Industrial Development Organization and the Republic of Turkey regarding the establishment of the Centre for Regional Cooperation in Turkey, signed on 27 August and 29 September 2010.

Viet Nam and the World Health Organization (WHO)

Aide memoire between the United Nations Industrial Development Organization, the Ministry of Health of Viet Nam and the World Health Organization Country Office for Viet Nam regarding the promotion of local pharmaceutical production in Viet Nam, signed on 25 November 2010.

(ii) *Agreements concluded with the United Nations, its programmes and offices, and the specialized agencies*

Multilateral agreements and arrangements

Memorandum of understanding between participating United Nations organizations and the United Nations Development Programme regarding the operational aspects of the United Nations country fund for Montenegro, signed on 11 January and 21 December 2009, 8,13, 14 and 18 January, 5 and 25 March and 26 April 2010.

Memorandum of understanding between participating United Nations organizations and the United Nations Development Programme regarding the operational aspects of a United Nations Development Group Haiti Reconstruction Fund (UNDG HRF) in Haiti, signed by UNIDO on 25 June 2010.

International Fund for Agricultural Development (IFAD)

Grant agreement between the United Nations Industrial Development Organization and the International Fund for Agricultural Development regarding the implementation of a project entitled "UNIDO-HLC-3A: promoting agri-business in Africa", signed on 4 and 16 February 2010.

International Labour Organization (ILO)

Memorandum of understanding between the United Nations Industrial Development Organization and the International Labour Organization regarding the implementation of a programme in Guinea entitled "Projet conjoint d'appui au mouvement de la jeunesse et à certains groupes de jeunes les plus déshérités", signed on 4 and 10 August 2010.

United Nations Development Programme (UNDP)

Letter of agreement between the United Nations Industrial Development Organization and the United Nations Development Programme regarding the placement in and support by UNDP of the fifteen UNIDO Desks, signed on 20 May and 24 June 2010.

Memorandum of understanding between the United Nations Industrial Development Organization and the United Nations Development Programme regarding occupancy and use of common premises by the United Nations agencies, programmes, funds and offices at Buenos Aires, Argentina, signed on 28 July 2010.

United Nations Environment Programme (UNEP)

Letter of agreement between the United Nations Industrial Development Organization and the United Nations Environment Programme regarding the implementation of a project entitled "Assessments and guidelines for sustainable liquid biofuels production in developing countries (a targeted research project)", signed on 26 October and 9 November 2010.

International Bank for Reconstruction and Development (IBRD)

Financial procedures agreement between the United Nations Industrial Development Organization and the International Bank for Reconstruction and Development, as Trustee of the Global Environment Facility Trust Fund, signed on 6 May 2010.

International Finance Corporation (IFC)

Amendment of the administration agreement between the United Nations Industrial Development Organization and the International Finance Corporation for the financial support of the activities undertaken by the Donor Committee for Enterprise Development (DCED) signed on 7 December 2006, by exchange of letters signed on 27 April and 29 June 2010.

World Health Organization (WHO)

Inter-agency letter of agreement between the United Nations Industrial Development Organization and the World Health Organization regarding the implementation of a project entitled "Promoting heat recovery power generation (HRPG) within the Chinese coal-gangue brick sector", signed on 21 May 2010.

World Tourism Organization (UNWTO)

Letter of agreement between the United Nations Industrial Development Organization and the World Tourism Organization regarding the implementation of a project entitled "Demonstrating and capturing best practices and technologies for the reduction of land-sourced impacts resulting from coastal tourism", signed on 6 August and 2 September 2010.

(iii) *Agreements concluded with other intergovernmental organizations*

European Community (EC) and European Union (EU)

European Union contribution agreement between the United Nations Industrial Development Organization and the European Community for the implementation of a project in Bangladesh entitled "Better work and standards programme (BEST): quality, fishery and textile", signed on 15 February and 5 March 2010.

European Community contribution agreement between the United Nations Industrial Development Organization and the European Community for the implementation of a project in Côte d'Ivoire entitled "Amélioration de la compétitivité des entreprises ivoiriennes des secteurs d'exportation non-traditionnels", signed on 22 March and 3 May 2010.

International Conference on the Great Lakes Region (ICGLR)

Relationship agreement between the United Nations Industrial Development Organization and the International Conference on the Great Lakes Region (ICGLR), signed on 29 October and 17 November 2010.

Southern African Development Community (SADC)

Memorandum of understanding between the Secretariat of the United Nations Industrial Development Organization and the Secretariat of the Southern African Development Community, signed on 24 August 2010.

(iv) *Agreements concluded with other entities*

Blacksmith Institute

Joint declaration between the United Nations Industrial Development Organization and the Blacksmith Institute regarding collaboration on polluted sites identification and clean-up programmes, signed on 12 April 2010.

Cabinda Gulf Oil Company

Trust fund agreement between the United Nations Industrial Development Organization and Cabinda Gulf Oil Company regarding the implementation of a project entitled "Technical assistance for Angola's entrepreneurship curricula in secondary schools programme", signed on 29 October 2010.

Chartered Institute of Purchasing and Supply (CIPS)

Memorandum of understanding between the United Nations Industrial Development Organization and the Chartered Institute of Purchasing and Supply (CIPS) regarding a network of subcontracting and partnership exchanges (SPXs), signed on 23 August 2010.

Ecobank Transnational Incorporated

Memorandum of understanding on cooperation between the United Nations Industrial Development Organization and Ecobank Transnational Incorporated, signed on 8 March 2010.

Gesellschaft für Technische Zusammenarbeit (GTZ)

Grant agreement between the United Nations Industrial Development Organization and the Deutsche Gesellschaft für Technische Zusammenarbeit (GTZ) GmbH regarding the implementation of a project entitled "Preparatory assistance for the establishment of a renewable energy knowledge management platform for technology transfer and capacity-building with emphasis on decentralized solutions and small-scale applications", signed on 9 and 18 March 2010.

Global Carbon Capture and Storage (CCS) Institute

Agreement between the United Nations Industrial Development Organization and the Global Carbon Capture and Storage (CCS) Institute regarding the implementation of a project entitled "Carbon capture and storage—industrial sector road map", signed on 25 February 2010.

Kasur Tannery Waste Management Agency (KTWMA)

Joint declaration between the United Nations Industrial Development Organization and Kasur Tannery Waste Management Agency regarding the establishment of a limed fleshing treatment plant for fat extraction at Kasur, Punjab, Pakistan, signed on 5 May 2010.

National Iranian Oil Company (NIOC)/Fuel Conservation Company (IFCO)

Trust fund agreement between the United Nations Industrial Development Organization and the National Iranian Oil Company (NIOC)/Fuel Conservation Company (IFCO) regarding the implementation of a project in the Islamic Republic of Iran entitled "Industrial energy efficiency in key sectors—preparatory assistance", signed on 4 May 2010.

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 entitled "African investor survey and subcontracting and partnership exchange (SPX) establishment in Côte d'Ivoire, Ghana, Nigeria, Senegal", signed on 6 and 10 December 2010.

South African Agri Academy (SAAA)

Trust fund agreement between the United Nations Industrial Development Organization and the South African Agri Academy regarding the implementation of a project entitled "Training of trainers for the promotion of emerging agro-processing clusters in South Africa", signed on 6 December 2010.

ZESCO Limited

Trust fund agreement between the United Nations Industrial Development Organization and ZESCO Limited regarding the implementation of a project in Zambia entitled "Renewable energy-based electricity generation for isolated mini-grids in Zambia—additional funding for setting up a mini-hydropower plant as a part of the small hydropower plant (SHP) mini-grid at Shiwa Ng'andu", signed on 27 May and 6 June 2010.

(v) *Agreements between UNIDO represented by the International Centre for Hydrogen Energy Technologies (ICHET) and other entities*

Dokuz Eylul University

Memorandum of understanding between the United Nations Industrial Development Organization represented by the International Centre for Hydrogen Energy Technologies (ICHET) and the Dokuz Eylul University, signed on 24 and 29 November 2010.

Istanbul Teknik University

Memorandum of understanding between the United Nations Industrial Development Organization represented by the International Centre for Hydrogen Energy Technologies (ICHET) and Istanbul Teknik University, signed on 29 November 2010.

Middle East Technical University and others

Memorandum of understanding between the United Nations Industrial Development Organization represented by the International Centre for Hydrogen Energy Technologies (ICHET) and Middle East Technical University, Yeditepe University, Ataturk University, Teksis Ileri Teknoloji, Punto Muhendislik and Minova Teknoloji Elektronik Sanayi regarding the implementation of a project entitled "Development of 3kW proton exchange membrane fuel cells (PEM) type fuel cells in Turkey", signed on 10, 11 and 21 June 2010.

Nigde University and others

Memorandum of understanding between the United Nations Industrial Development Organization represented by the International Centre for Hydrogen Energy Technologies (ICHET) and Nigde University, Vestel Savunma Sanayi and Gazi University regarding the implementation of a project entitled "Development of a combined heat and power (CHP) system in Turkey", signed on 10, 17, 31 May and 1 June 2010.

Sakarya University

Memorandum of understanding between the United Nations Industrial Development Organization represented by the International Centre for Hydrogen Energy Technologies (ICHET) and Sakarya University, signed on 30 September 2010.

Yildiz Teknik University

Memorandum of understanding between the United Nations Industrial Development Organization represented by the International Centre for Hydrogen Energy Technologies (ICHET) and the Yildiz Teknik University, signed on 13 December 2010.

10. World Trade Organization

(*a*) Membership

(i) *General*

Applications for World Trade Organization (WTO) membership are examined in individual Accession Working Parties, which are established by the WTO General Council. The legal and policy framework of WTO Accessions is set out in article XII of the Marrakesh Agreement Establishing the World Trade Organization.[795] Special Guidelines for Least-developed Countries' Accessions are provided for by General Council Decision

[795] United Nations, *Treaty Series*, vol. 1867, p. 3.

of 10 December 2002.[796] As a result of bilateral and multilateral negotiations with WTO members, acceding Governments undertake trade liberalizing commitments on market access and comply with WTO rules.

(ii) *Ongoing accessions*

The following Governments are in the process of accession to the WTO (in alphabetical order):

1. Afghanistan
2. Algeria
3. Andorra
4. Azerbaijan
5. The Bahamas
6. Belarus
7. Bhutan
8. Bosnia and Herzegovina
9. Union of Comoros
10. Equatorial Guinea
11. Ethiopia
12. Islamic Republic of Iran
13. Iraq
14. Kazakhstan
15. Lao People's Democratic Republic
16. Lebanese Republic
17. Liberia
18. Libyan Arab Jamahiriya
19. Montenegro
20. Russian Federation
21. Samoa
22. Sao Tomé and Principe
23. Serbia
24. Seychelles
25. Sudan
26. Syrian Arab Republic
27. Tajikistan
28. Uzbekistan
29. Vanuatu
30. Yemen

Of these 30 acceding Governments:

- 24 acceding Governments 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;
- 23 Working Parties have held their first meeting;
- 19 acceding Governments have tabled their offers on goods and/or services to initiate bilateral market access negotiations with interested members;
- 3 Accession Working Parties are advancing on the basis of a Factual Summary;
- 3 Accession Working Parties are advancing on the basis of an Elements of a Draft Working Party Report; and,
- 11 Accession Working Parties are advancing on the basis of a Draft Working Party Report.

[796] World Trade Organization, document WT/L/508.

(*b*) Dispute settlement

During 2010, 17 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:

- Philippines—Taxes on Distilled Spirits (WT/DS396, WT/DS403)
- United States—Measures Affecting Imports of Certain Passenger Vehicle and Light Truck Tyres from China (WT/DS399)
- United States—Use of Zeroing in Anti-Dumping Measures Involving Products from Korea (WT/DS402)
- United States—Anti-Dumping Measures on Certain Shrimp from Viet Nam (WT/DS404)
- European Union—Anti-Dumping Measures on Certain Footwear from China (WT/DS405)
- United States—Measures Affecting the Production and Sale of Clove Cigarettes (WT/DS406)

(*c*) Waivers under article XI of the WTO Agreement

During the period under review, the General Council granted the following waivers from obligations under the WTO Agreements, which are still in effect.

Waivers	Granted	Expiry	Decision
Granted during 2010			
Introduction of Harmonized System 2007 Changes into WTO Schedules of Tariff Concessions Argentina; Australia; Brazil; Canada; China; Costa Rica; Croatia; El Salvador; European Union; Guatemala; Honduras; Hong Kong, China; India; Israel; Republic of Korea; Macao, China; Malaysia; Mexico; New Zealand; Nicaragua; Norway; Pakistan; Singapore; Switzerland; Thailand; United States; and Uruguay	14 December 2010	31 December 2011	WT/L/809
Introduction of Harmonized System 2002 Changes into WTO Schedules of Tariff Concessions Argentina; Australia; Brazil; Canada; China; Costa Rica; Croatia; El Salvador; European Union; Guatemala; Honduras; Hong Kong, China; India; Israel; Republic of Korea; Macao, China; Malaysia; Mexico; New Zealand; Nicaragua; Norway; Pakistan; Singapore; Switzerland; Thailand; United States; and Uruguay	14 December 2010	31 December 2011	WT/L/808
Argentina—Introduction of Harmonized System 1996 Changes into WTO Schedules of Tariff Concessions	29 July 2010	30 April 2011	WT/L/801
Previously granted—in force in 2010			
Implementation of paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health	2 September 2003	The Decision, including the waivers granted in it, shall terminate for each member on the date on which an amendment to the TRIPS Agreement replacing its provisions takes effect for that member	WT/L/540 and Corr.1
LDCs—article 70.9 of the TRIPS Agreement with respect to pharmaceutical products	8 July 2002	1 January 2016	WT/L/478

Waivers	Granted	Expiry	Decision
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
Kimberley Process Certification Scheme for rough diamonds—Extension of waiver to Australia; Botswana; Brazil; Canada; Croatia; India; Israel, Japan; Republic of Korea; Mauritius; Mexico; Norway; Philippines; Sierra Leone; Chinese Taipei; Thailand; United Arab Emirates; United States; and Venezuela	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
Introduction of Harmonized System 2002 Changes into WTO Schedules of Tariff Concessions Argentina; Australia; Brazil; China; Costa Rica; Croatia; El Salvador; European Union; Iceland; India; Republic of Korea; Mexico; New Zealand; Norway; Thailand; United States; and Uruguay	18 December 2008	31 December 2010	WT/L/786
Introduction of Harmonized System 2007 Changes into WTO Schedules of Tariff Concessions Argentina; Australia; Brazil; Canada; China; Costa Rica; Croatia; El Salvador; European Union; Guatemala; Honduras; Hong Kong, China; India; Israel; Republic of Korea; Macao, China; Malaysia; Mexico; New Zealand; Nicaragua; Norway; Pakistan; Singapore; Switzerland; Thailand; United States; and Uruguay	18 December 2008	31 December 2010	WT/L/787 and Add.1
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

Waivers	Granted	Expiry	Decision
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

11. International Atomic Energy Agency

(*a*) Member States of the International Atomic Energy Agency (IAEA)

In 2010, the number of Member States of the IAEA remained the same. By the end of the year, there were 151 Member States.

(*b*) Treaties under IAEA auspices

(i) *Convention on the Physical Protection of Nuclear Material*[797]

In 2010, Bahrain, the Lao People's Democratic Republic and Lesotho became parties to the Convention. By the end of the year, there were 145 parties.

(ii) *Amendment to the Convention on the Physical Protection of Nuclear Material*

In 2010, Bahrain, Bosnia and Herzegovina, Czech Republic, Denmark, Germany, Indonesia, Latvia, Mali, Nauru, Portugal, Tunisia and the United Kingdom adhered to the Amendment. By the end of the year, there were 45 Contracting States.

(iii) *Convention on Early Notification of a Nuclear Accident*[798]

In 2010, the Dominican Republic, Georgia and Kazakhstan became party to the Convention. By the end of the year, there were 109 parties.

(iv) *Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency*[799]

In 2010, Kazakhstan became party to the Convention. By the end of the year, there were 105 parties.

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[797] United Nations, *Treaty Series*, vol. 1456, p. 124.

[798] *Ibid.*, vol. 1439, p. 275.

[799] *Ibid.*, vol. 1457, p. 133.

(v) *Convention on Nuclear Safety*[800]

In 2010, Bosnia and Herzegovina, Kazakhstan, Saudi Arabia, Tunisia and Viet Nam became parties to the Convention. By the end of the year, there were 71 parties. In addition, in 2010 the Convention was ratified by Bahrain.

(vi) *Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management*[801]

In 2010, Cyprus, Gabon, Kazakhstan, Montenegro, Republic of Moldova and the former Yugoslav Republic of Macedonia became parties to the Joint Convention. By the end of the year, there were 57 parties.

(vii) *Vienna Convention on Civil Liability for Nuclear Damage*[802]

In 2010, the status of the Convention remained unchanged with 36 parties.

(viii) *Protocol to Amend the Vienna Convention on Civil Liability for Nuclear Damage*[803]

In 2010, Poland became party to the Protocol. By the end of the year, there were 6 parties.

(ix) *Joint Protocol Relating to the Application of the Vienna Convention and the Paris Convention*[804]

In 2010, the status of the Joint Protocol remained unchanged with 26 parties.

(x) *Convention on Supplementary Compensation for Nuclear Damage*[805]

In 2010, India signed the Convention. By the end of the year, there were 14 signatories and 4 Contracting States.

(xi) *Optional Protocol Concerning the Compulsory Settlement of Disputes*[806]

In 2010, the status of the Protocol remained unchanged with 2 parties.

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[800] *Ibid.*, vol. 1963, p. 293.

[801] *Ibid.*, vol. 2153, p. 303.

[802] *Ibid.*, vol. 1063, p. 266.

[803] *Ibid.*, vol. 2241, p. 270.

[804] *Ibid.*, vol. 1672, p. 293.

[805] International Atomic Energy Agency, document INFCIRC/567.

[806] United Nations, *Treaty Series*, vol. 2086, p. 94.

(xii) *Revised Supplementary Agreement Concerning the Provision of Technical Assistance by the IAEA (RSA)*[807]

In 2010, Gabon, Lesotho and Oman concluded the RSA Agreement. By the end of the year, there were 114 Member States which 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)*[808]

In 2010, the status of the Agreement remained unchanged with 15 parties.

(xiv) *African Regional Co-operative Agreement for Research, Development and Training; Related to Nuclear Science and Technology (AFRA)—(Fourth Extension)*[809]

The fourth extension of the Agreement entered into force on 4 April 2010, upon expiration of the third extension, and will remain in force for an additional period of five years, i.e. through 3 April 2015. In 2010, the following States became party to the Fourth Extension: Algeria, Angola, Benin, Burkina Faso, Cameroon, Côte d'Ivoire, Democratic Republic of the Congo, Egypt, Gabon, Lesotho, Libyan Arab Jamahiriya, Madagascar, Malawi, Mauritius, Morocco, Namibia, South Africa, Sudan, Tunisia, Uganda and Zimbabwe. By the end of the year, there were 21 parties.

(xv) *Co-operation Agreement for the Promotion of Nuclear Science and Technology in Latin America and the Caribbean (ARCAL)*[810]

In 2010, Guatemala and Honduras became party to the Agreement. By the end of the year, there were 20 parties.

(xvi) *Co-operative Agreement for Arab States in Asia for Research, Development and Training Related to Nuclear Science and Technology (ARASIA)*[811]

In 2010, Oman and Qatar became party to the Agreement. By the end of the year, there were 9 parties.

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[807] Model text available from http://ola.iaea.org/OLA/documents/RSA/RSA%20texts.asp.

[808] International Atomic Energy Agency, document INFCIRC/167/Add.22.

[809] *Ibid*., document INFCIRC/377 and INFCIRC/377/Add.19 (Fourth extension).

[810] *Ibid*., document INFCIRC/582.

[811] *Ibid*., document INFCIRC/613/Add.1.

(xvii) *Agreement on the Establishment of the ITER International Fusion Energy Organization for the Joint Implementation of the ITER Project*[812]

In 2010, 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*[813]

In 2010, the status of the Agreement remained unchanged with 6 parties.

(*c*) IAEA legislative assistance activities

During 2010, the IAEA continued to provide legislative assistance in response to requests from Member States. In particular, the IAEA provided bilateral assistance to 26 Member States by means of written comments and advice in drafting national nuclear legislation and regulations. In addition, training was provided at IAEA Headquarters, notably through short-term scientific visits as well as longer-term fellowships to individuals on the subject.

Further, the IAEA continued to take part in academic activities related to nuclear law such as the World Nuclear University and the International School of Nuclear Law by providing lecturers and by funding selected participants.

Also, a total of four international and regional workshops were organized by the IAEA both at IAEA Headquarters and abroad.

In particular, a "Regional Workshop on the Assessment of National Legal Frameworks Governing Nuclear Power and Nuclear Applications in Member States of the Africa Region", was held at IAEA Headquarters in October 2010. The purpose of this workshop was to provide an overview of nuclear law and to provide in-depth information on the international legal instruments on nuclear safety, nuclear security and safeguards, including synergies between and recent developments in these areas.

In December 2010 a "Regional Meeting for Senior Government Officials on the International Legal Framework and National Legislation Governing Nuclear Safety, Security, Safeguards and Nuclear Liability for Member States in Latin America and the Caribbean" was held at IAEA Headquarters. The purpose of this meeting was to provide participants with an overview of the international legal instruments on nuclear safety, nuclear security, safeguards and civil liability for nuclear damage as well as the elements of corresponding implementing legislation.

In the field of nuclear security, the IAEA organized in April 2010 a "Workshop on Implementing Legislation in Nuclear Security for Certain Asian States" at IAEA Headquarters. The purpose of this workshop was to provide participants with in-depth information on the international legal instruments governing nuclear security and possible synergies with the safeguards area.

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[812] *Ibid.*, document INFCIRC/703.

[813] United Nations, *Treaty Series*, vol. 1063, p. 265.

In the field of civil liability for nuclear damage, the IAEA organized in July 2010 a "Regional Workshop for Countries of Eastern Europe and Central Asia" in Moscow, Russian Federation. The purpose of this workshop was to provide information on the existing international nuclear liability regime, in particular the international legal instruments adopted under the auspices of the IAEA in this field, including the Protocol to Amend the Vienna Convention on Civil Liability for Nuclear Damage and the Convention on Supplementary Compensation for Nuclear Damage. An additional purpose of the workshop was to advise participants on the development of national implementing legislation to reflect the principles and norms of the international nuclear liability regime.

(*d*) Code of Conduct on the Safety and Security of Radioactive Sources

The Code of Conduct on the Safety and Security of Radioactive Sources (the Code of Conduct)[814] is a non-binding international legal instrument which applies to all radioactive sources that may pose a significant risk to individuals, society and the environment. By the end of 2010, the number of commitments by States to work towards following the provisions of the Code of Conduct had increased to 100 States. Moreover, 58 States have notified the Director General of their intention to act in a harmonized manner in accordance with the supplementary Guidance on the Import and Export of Radioactive Sources.

An open-ended meeting of technical and legal experts for sharing information as to States' implementation of the Code of Conduct on the Safety and Security of Radioactive Sources and its supplementary Guidance on the Import and Export of Radioactive Sources was held from 17 to 21 May 2010 at the IAEA Headquarters in Vienna. The meeting was attended by 160 experts from 90 Member States (and one Non-member State) and by observers from various international organizations.

The objective of the meeting was to promote a wide exchange of information on the national implementation of the Code of Conduct and the Guidance among States. The meeting, *inter alia*, recommended that: a process for the review of the Guidance be put in place by the Secretariat; the Secretariat organize a consultancy meeting to discuss the issue of the management of orphan sources detected at national borders; States take the Nuclear Security Series guidance into account in developing their national source security frameworks; and that the IAEA convene an international conference to follow up on the findings of the "International Conference on the Safety and Security of Radioactive Sources: Towards a Global System for the Continuous Control of Sources throughout their Life Cycle", held in Bordeaux, France, in 2005.

[814] Available from http://www.iaea.org/Publications/Booklets/RadioactiveSources/radioactive-source.pdf.

(*e*) Safeguards agreements

During 2010, Safeguards Agreements pursuant to the Treaty on the Non-Proliferation of Nuclear Weapons (NPT)[815] with Andorra,[816] Angola,[817] Chad,[818] Gabonese Republic[819] and Rwanda[820] entered into force.

In addition, Romania[821] acceded to the Safeguards Agreement between the non-nuclear-weapon States of the European Atomic Energy Community (Euratom), Euratom and the IAEA. Safeguards Agreements pursuant to the NPT were signed by the Republic of the Congo, Djibouti and Mozambique but had not entered into force as of December 2010.

In 2010, Protocols Additional to the Safeguards Agreements between the IAEA and Albania,[822] Angola,[823] Chad,[824] Dominican Republic,[825] Gabonese Republic,[826] Lesotho,[827] Philippines,[828] Rwanda,[829] Swaziland[830] and the United Arab Emirates[831] entered into force. Iraq[832] notified the IAEA that it will, pending entry into force, apply the Protocol provisionally as of 17 February 2010.

In addition, Romania[833] acceded to the Protocol Additional to the Safeguards Agreement between the non-nuclear-weapon States of Euratom, Euratom and the IAEA. Additional Protocols were signed by Bahrain, Republic of the Congo, Djibouti and Mozambique but had not entered into force as of December 2010. An Additional Protocol with Gambia was approved by the IAEA Board of Governors in 2010.

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[815] United Nations, *Treaty Series*, vol. 729, p. 161.

[816] International Atomic Energy Agency, document INFCIRC/808.

[817] *Ibid.*, document INFCIRC/800.

[818] *Ibid.*, document INFCIRC/802.

[819] *Ibid.*, document INFCIRC/792.

[820] *Ibid.*, document INFCIRC/801.

[821] *Ibid.*, document INFCIRC/193/Add.27.

[822] *Ibid.*, document INFCIRC/359/Add.1.

[823] *Ibid.*, document INFCIRC/800/Add.1.

[824] *Ibid.*, document INFCIRC/802/Add.1.

[825] *Ibid.*, document INFCIRC/201/Add.1.

[826] *Ibid.*, document INFCIRC/792/Add.1.

[827] *Ibid.*, document INFCIRC/199/Add.1.

[828] *Ibid.*, document INFCIRC/216/Add.1.

[829] *Ibid.*, document INFCIRC/801/Add.1.

[830] *Ibid.*, document INFCIRC/227/Add.I.

[831] *Ibid.*, document INFCIRC/622/Add.I.

[832] *Ibid.*, document INFCIRC/I72/Add.2.

[833] Reproduced in IAEA Document: INFCIRC/193/Add.28.

12. Organisation for the Prohibition of Chemical Weapons

(*a*) Membership

During 2010, the membership to the Chemical Weapons Convention ("the Convention" or "CWC")[834] remained unchanged. As of 31 December 2010, there were 188 States Parties to the CWC, and there remained seven States that had not ratified or acceded to the Convention. Of these States, two had signed the CWC and five had not. Universality had already been achieved in three regions, namely: Eastern Europe, the Latin American and Caribbean Group (GRULAC) and the Western European and Others Group (WEOG).

(*b*) Legal status, privileges and immunities and international agreements

Pursuant to paragraph 50 of article VIII of the Convention, three agreements on the privileges and immunities of the OPCW entered into force, namely the agreements with the United Arab Emirates, Denmark, and Portugal, on 20 January 2010, 15 April 2010 and 2 July 2010, respectively.[835]

In addition, during the reporting period, the OPCW continued to negotiate bilateral privileges and immunities agreements with States Parties. Three such agreements were signed in 2010. The first agreement, concluded with Republic of Guinea, was signed on 1 December 2010; the second agreement was signed with the Republic of Madagascar on 2 December 2010; the third agreement with the Union of the Comoros was signed on 3 December 2010. The entry into force of these agreements is pending.

Furthermore, the agreement with the Government of the Republic of South Africa was approved by the Executive Council of the OPCW on 6 October 2010 and its signature and entry into force are pending.

The OPCW concluded a number of memoranda of understanding and technical arrangements during 2010. In total, 11 international agreements were registered during the year under review.

(*c*) OPCW legislative assistance activities

Throughout 2010, 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 national implementation measures of article VII obligations adopted by the Conference at its Fourteenth Session.[836]

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 obliga-

[834] United Nations, *Treaty Series*, vol. 1974, p. 45.

[835] See Chapter II B, section 7.

[836] Organisation for the Prohibition of Chemical Weapons, document C-14/DEC.12 (4 December 2009).

tions adopted by the Conference at its Eighth Session ("the Action Plan")[837] as well as other decisions regarding the implementation of article VII obligations.[838] These decisions focussed on, among 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 2010, the Technical Secretariat provided, upon request, 20 comments on draft implementing legislation and 10 comments or guidances on measures at the regulatory level. Such requests for legal assistance were received from 24 States Parties from the following regions: fourteen from Africa; three from Asia; three from Eastern Europe; three from GRULAC; and one from WEOG.

In addition to the assistance to individual States Parties, a number of national, subregional, regional workshops, sensitisation 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.

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 2010, the number of National Authorities in place remained stable. As of January 2011, 185 States arties (98 per cent) have designated or established a National Authority. There remain only three States Parties that have not yet fulfilled the requirement of article VII (4) of the CWC. Additionally, with regard to the adoption of the necessary legislative and/or administrative measures to fully and effectively implement the Convention, 87 of the States Parties (46 per cent) have adopted legislation covering all key areas of the Action Plan, as at the date of this report.

13. Preparatory Commission for the Comprehensive Nuclear-Test-Ban Treaty Organization

(*a*) Membership

The Preparatory Commission is composed of States signatories to the 1996 Comprehensive Nuclear-Test-Ban Treaty (CTBT).[839] No additional States signed the Treaty during 2010 and the total number of signatures remained at 182.

During 2010, two States, the Central African Republic and Trinidad and Tobago, deposited instruments of ratification of the CTBT with the United Nations Secretary-

[837] *Ibid*., document C-8/DEC.16 (24 October 2003).

[838] *Ibid*., documents C-10/DEC.16 (11 November 2005); C-11/DEC.4 (6 December 2006); C-12/DEC.9 (9 November 2007); and C-13/DEC.7 (5 December 2008).

[839] *United Nations Juridical Yearbook 1996* (United Nations Publication, Sales No. 01.V.10), p. 311.

General. In order for the Treaty to enter into force, ratification by the following nine States is needed: China, Democratic People's Republic of Korea, Egypt, India, Indonesia, Israel, Islamic Republic of Iran, Pakistan, United States of America.

(*b*) Legal status, privileges and immunities and international agreements

In addition to the Headquarters Agreement concluded with the Republic of Austria concerning the seat of the Preparatory Commission, legal status, privileges and immunities are granted to the Preparatory Commission through "Facility Agreements" concluded with each of the States which are hosting one or more of the 337 monitoring facilities comprising the International Monitoring System (IMS) foreseen to be established under the CTBT. In 2010, a facility agreement with the Central African Republic was concluded and entered into force. The status at the end of 2010 was 39 concluded facility agreements out of which 33 have entered into force.

Pursuant to the decision of the Preparatory Commission in 2006 to exceptionally allow IMS data to be shared with tsunami warning centres approved as such by the Intergovernmental Oceanographic Commission of UNESCO,[840] in 2010 the Preparatory Commission concluded with France an Agreement concerning the Use of Primary Seismic, Auxiliary Seismic and Hydroacoustic Data for Tsunami Warning Purposes. This brings the total number of such agreements to eight, concluded with: Australia, France, Indonesia, Japan, Philippines, Thailand and two with the United States of America.

In 2010 two Memoranda of Understanding were concluded: (1) with the United Nations Educational, Scientific and Cultural Organization (UNESCO) for coordination of activities and cooperation; and (2) with the International Computing Centre (ICC) for services.

To provide for the necessary privileges and immunities and arrangements for the conduct of workshops or training courses outside of Austria, 10 exchanges of letters were concluded with host States.

(*c*) Legislative assistance activities

Pursuant to paragraph 18 of the Annex to the 1996 Resolution Establishing the Preparatory Commission, the Provisional Technical Secretariat of the Preparatory Commission continued to provide advice and assistance upon request to States in three areas: (a) legal and technical information about the CTBT in order to facilitate signature or ratification of the Treaty; (b) the legal and administrative measures necessary for the implementation of the Treaty; and (c) the national measures necessary to enable activities of the Preparatory Commission during the preparatory phase, in particular those related to the provisional operation of the IMS.

In 2010, the Secretariat provided comments and assistance on 93 legal assistance requests from States Parties. It also established a Legislation Database on its website to facilitate the exchange of information on national implementing legislation.[841]

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[840] See *United Nations Juridical Yearbook 2006* (United Nations Publication, Sales No. E.09.V.1), p. 256.

[841] See www.ctbto.org.

Chapter IV

TREATIES CONCERNING INTERNATIONAL LAW CONCLUDED UNDER THE AUSPICES OF THE UNITED NATIONS AND RELATED INTERGOVERNMENTAL ORGANIZATIONS

A. Treaties concerning international law concluded under the auspices of the United Nations

1. International Cocoa Agreement. Geneva, 25 June 2010*

Preamble

The Parties to the Agreement,

(*a*) *Recognizing* the contribution of the cocoa sector to poverty alleviation and the achievement of the internationally agreed development goals, including the Millennium Development Goals (MDGs);

(*b*) *Recognizing* the importance of cocoa and the cocoa trade for the economies of developing countries, as a source of income for their populations, and recognizing the key contribution of the cocoa trade to their export earnings and to the formulation of social and economic development programmes;

(*c*) *Recognizing* the importance of the cocoa sector to the livelihoods of millions of people, particularly in developing countries where small-scale farmers rely on cocoa production as a direct source of income;

(*d*) *Recognizing* that close international cooperation on cocoa matters and continuing dialogue between all stakeholders in the cocoa value chain may contribute to the sustainable development of the world cocoa economy;

(*e*) *Recognizing* the importance of strategic partnerships between exporting and importing Members to ensure the achievement of a sustainable cocoa economy;

(*f*) *Recognizing* the need to ensure the transparency of the international cocoa market, for the benefit of both producers and consumers;

(*g*) *Recognizing* the contribution of the previous International Cocoa Agreements of 1972, 1975, 1980, 1986, 1993, and 2001 to the development of the world cocoa economy;

Hereby agree the following;

* Adopted on 25 June 2010 by the United Nations Cocoa Conference held in Geneva under the auspices of the United Nations Conference for Trade and Development.

Chapter I. Objectives

Article 1. Objectives

With a view to strengthening the global cocoa sector, supporting its sustainable development and increasing the benefits to all stakeholders, the objectives of the Seventh International Cocoa Agreement are:

(*a*) To promote international cooperation in the world cocoa economy;

(*b*) To provide an appropriate framework for discussion on all cocoa matters among governments, and with the private sector;

(*c*) To contribute to the strengthening of the national cocoa economies of Member countries, through the preparation, development and evaluation of appropriate projects to be submitted to the relevant institutions for financing and implementation and seeking finance for projects that benefit Members and the world cocoa economy;

(*d*) To strive towards obtaining fair prices leading to equitable economic returns to both producers and consumers in the cocoa value chain, and to contribute to a balanced development of the world cocoa economy in the interest of all Members;

(*e*) To promote a sustainable cocoa economy in economic, social and environmental terms;

(*f*) To encourage research and the implementation of its findings through the promotion of training and information programmes leading to the transfer to Members of technologies suitable for cocoa;

(*g*) To promote transparency in the world cocoa economy, and in particular in the cocoa trade, through the collection, analysis and dissemination of relevant statistics and the undertaking of appropriate studies, as well as to promote the elimination of trade barriers;

(*h*) To promote and to encourage consumption of chocolate and cocoa-based products in order to increase demand for cocoa, inter alia through the promotion of the positive attributes of cocoa, including health benefits, in close cooperation with the private sector;

(*i*) To encourage Members to promote cocoa quality and to develop appropriate food safety procedures in the cocoa sector;

(*j*) To encourage Members to develop and implement strategies to enhance the capacity of local communities and small-scale farmers to benefit from cocoa production and thereby contribute to poverty alleviation;

(*k*) To facilitate the availability of information on financial tools and services that can assist cocoa producers, including access to credit and approaches to managing risk.

Chapter II. Definitions

Article 2. Definitions

For the purposes of this Agreement:

1. *Cocoa* means cocoa beans and cocoa products;

2. *Fine or flavour cocoa* is cocoa recognized for its unique flavour and colour, and produced in countries designated in annex C of this Agreement;

3. *Cocoa products* means products made exclusively from cocoa beans, such as cocoa paste/liquor, cocoa butter, unsweetened cocoa powder, cocoa cake and cocoa nibs;

4. *Chocolate and chocolate products* are products made from cocoa beans which comply with the *Codex Alimentarius* standard for chocolate and chocolate products;

5. *Stocks of cocoa beans* means all dry cocoa beans that can be identified as at the last day of the cocoa year (30 September), irrespective of location, ownership or intended use;

6. *Cocoa year* means the period of 12 months from 1 October to 30 September inclusive;

7. *Organization* means the International Cocoa Organization referred to in article 3;

8. *Council* means the International Cocoa Council referred to in article 6;

9. *Contracting Party* means a Government, the European Union or an intergovernmental organization as provided for in article 4, which has consented to be bound by this Agreement provisionally or definitively;

10. *Member* means a Contracting Party as defined above;

11. *Importing country* or *importing Member* means a country or a Member respectively whose imports of cocoa, expressed in terms of beans, exceed its exports;

12. *Exporting country* or *exporting Member* means a country or a Member respectively whose exports of cocoa, expressed in terms of beans, exceed its imports. However, a cocoa-producing country whose imports of cocoa, expressed in bean equivalent terms, exceed its exports but whose production of cocoa beans exceeds its imports or whose production exceeds its apparent domestic cocoa consumption* may, if it so chooses, be an exporting Member;

13. *Export of cocoa* means any cocoa which leaves the customs territory of any country and *import of cocoa* means any cocoa which enters the customs territory of any country, provided that, for the purposes of these definitions, customs territory shall, in the case of a Member which comprises more than one customs territory, be deemed to refer to the combined customs territories of that Member;

14. *A sustainable cocoa economy* implies an integrated value chain in which all stakeholders develop and promote appropriate policies to achieve levels of production, processing and consumption that are economically viable, environmentally sound and socially responsible for the benefit of present and future generations, with the aim of improving productivity and profitability in the cocoa value chain for all stakeholders concerned, in particular for the smallholder producers;

15. *Private sector* comprises all private entities which have main activities in the cocoa sector, including farmers, traders, processors, manufacturers and research institutes. In the framework of this Agreement, the private sector also comprises public enterprises, agencies and institutions which, in certain countries, fulfil roles that are performed by private entities in other countries;

* Calculated as grindings of cocoa beans plus net imports of cocoa products and of chocolate and chocolate products in beans equivalent.

16. *Indicator price* is the representative indicator of the international price of cocoa used for the purposes of this Agreement and computed in accordance with the provisions of article 33;

17. *Special Drawing Right (SDR)* means the Special Drawing Right of the International Monetary Fund;

18. *Tonne* means a mass of 1,000 kilograms or 2,204.6 pounds and pound means 453.597 grams;

19. *Simple distributed majority vote* means a majority of votes cast by exporting Members and a majority of votes cast by importing Members, counted separately;

20. *Special vote* means two thirds of the votes cast by exporting Members and two thirds of the votes cast by importing Members, counted separately, on condition that at least five exporting Members and a majority of importing Members are present;

21. *Entry into force* means, except when qualified, the date on which this Agreement first enters into force, whether provisionally or definitively.

Chapter III. The International Cocoa Organization (Icco)

Article 3. Headquarters and structure of the International Cocoa Organization

1. The International Cocoa Organization established by the International Cocoa Agreement, 1972, shall continue in being and shall administer the provisions and supervise the operation of this Agreement.

2. The headquarters of the Organization shall always be located in the territory of a Member.

3. The headquarters of the Organization shall be in London unless the Council decides otherwise.

4. The Organization shall function through:

(*a*) The International Cocoa Council, which is the highest authority of the Organization;

(*b*) The subsidiary bodies of the Council, comprising the Administration and Finance Committee, the Economics Committee, the Consultative Board on the World Cocoa Economy, and any other committees established by the Council; and

(*c*) The Secretariat.

Article 4. Membership in the Organization

1. Each Contracting Party shall be a Member of the Organization.

2. There shall be two categories of Members of the Organization, namely:

(*a*) Exporting Members; and

(*b*) Importing Members.

3. A Member may change its category on such conditions as the Council may establish.

4. Two or more Contracting Parties may, by appropriate notification to the Council and to the Depositary, which will take effect on a date to be specified by the Contracting

Parties concerned and on conditions agreed by the Council, declare that they are participating in the Organization as a Member group.

5. Any reference in this Agreement to "a Government" or "Governments" shall be construed as including the European Union and any intergovernmental organization having comparable responsibilities in respect of the negotiation, conclusion and implementation of international agreements, in particular commodity agreements. Accordingly, any reference in this Agreement to signature, ratification, acceptance or approval, or to notification of provisional application or to accession shall, in the case of such intergovernmental organizations, be construed as including a reference to signature, ratification, acceptance or approval, or to notification of provisional application, or to accession, by such intergovernmental organizations.

6. In the case of voting on matters within their competence, such intergovernmental organizations shall vote with a number of votes equal to the total number of votes attributable to their member States in accordance with article 10. In such cases, the member States of such intergovernmental organizations shall not exercise their individual voting rights.

Article 5. Privileges and immunities

1. The Organization shall have legal personality. It shall in particular have the capacity to contract, acquire and dispose of movable and immovable property and to institute legal proceedings.

2. The status, privileges and immunities of the Organization, its Executive Director, its staff, experts and representatives of Members, while in the territory of the host country for the purpose of exercising their functions, shall be governed by the Headquarters' Agreement concluded between the host country and the International Cocoa Organization.

3. The Headquarters' Agreement referred to in paragraph 2 of this article shall be independent of this Agreement. It shall, however, terminate:

(*a*) Pursuant to the provisions of the aforementioned Headquarters' Agreement;

(*b*) In the event of the headquarters of the Organization being moved from the territory of the host Government; or

(*c*) In the event of the Organization ceasing to exist.

4. The Organization may conclude with one or more other Members agreements to be approved by the Council relating to such privileges and immunities as may be necessary for the proper functioning of this Agreement.

Chapter IV. The International Cocoa Council

Article 6. Composition of the International Cocoa Council

1. The International Cocoa Council shall consist of all the Members of the Organization.

2. In the meetings of the Council, Members shall be represented by duly accredited delegates.

Article 7. Powers and functions of the Council

1. The Council shall exercise all such powers and perform or arrange for the performance of all such functions as are necessary to carry out the express provisions of this Agreement.

2. The Council shall not have the power, and shall not be taken to have been authorized by the Members, to incur any obligation outside the scope of this Agreement; in particular, it shall not have the capacity to borrow money. In exercising its capacity to contract, the Council shall incorporate in its contracts the terms of this provision and of article 23 in such a way as to bring them to the notice of the other parties entering into contracts with the Council, but any failure to incorporate such terms shall not invalidate such a contract or render it ultra vires the Council.

3. The Council shall adopt such rules and regulations as are necessary to carry out the provisions of this Agreement and are consistent therewith, including its rules of procedure and those of its committees, and the financial and staff regulations of the Organization. The Council may, in its rules of procedure, provide for a procedure whereby it may, without meeting, decide specific questions.

4. The Council shall keep such records as are required for the performance of its functions under this Agreement, and such other records as it considers appropriate.

5. The Council may set up any working group(s) as appropriate to assist it in carrying out its task.

Article 8. Chairman and Vice-Chairman of the Council

1. The Council shall elect a Chairman and a Vice-Chairman for each cocoa year, who shall not be paid by the Organization.

2. Both the Chairman and the Vice-Chairman shall be elected from among the representatives of the exporting Members or from among the representatives of the importing Members. These offices shall alternate each cocoa year between the two categories.

3. In the temporary absence of both the Chairman and the Vice-Chairman or the permanent absence of one or both of them, the Council may elect new officers from among the representatives of the exporting Members or from among the representatives of the importing Members, as appropriate, on a temporary or permanent basis as may be required.

4. Neither the Chairman nor any other officer presiding at meetings of the Council shall vote. A member of his/her delegation may exercise the voting rights of the Member which he or she represents.

Article 9. Sessions of the Council

1. As a general rule, the Council shall hold one regular session in each half of the cocoa year.

2. The Council shall meet in special session whenever it so decides or at the request of:

(*a*) Any five Members;

(*b*) At least two Members having at least 200 votes;

(*c*) The Executive Director, for the purposes of articles 22 and 59.

3. Notice of sessions shall be given at least 30 calendar days in advance, except in case of emergency, where notice shall be at least 15 days.

4. Sessions shall normally be held at the headquarters of the Organization unless the Council decides otherwise. If, on the invitation of any Member, the Council decides to meet elsewhere than at the headquarters of the Organization, that Member shall pay the additional costs involved, as defined in the administrative rules of the Organization.

Article 10. Votes

1. The exporting Members shall together hold 1,000 votes and the importing Members shall together hold 1,000 votes, distributed within each category of Members—that is, exporting and importing Members, respectively—in accordance with the following paragraphs of this article.

2. For each cocoa year, the votes of exporting Members shall be distributed as follows: each exporting Member shall have five basic votes. The remaining votes shall be divided among all the exporting Members in proportion to the average volume of their respective exports of cocoa in the preceding three cocoa years for which data have been published by the Organization in its latest issue of the *Quarterly Bulletin of Cocoa Statistics*. For this purpose, exports shall be calculated as net exports of cocoa beans plus net exports of cocoa products, converted to beans equivalent using the conversion factors as specified in article 34.

3. For each cocoa year, the votes of importing Members shall be distributed among all importing Members in proportion to the average volume of their respective imports of cocoa in the preceding three cocoa years for which data have been published by the Organization in its latest issue of the *Quarterly Bulletin of Cocoa Statistics*. For this purpose, imports shall be calculated as net imports of cocoa beans plus gross imports of cocoa products, converted to beans equivalent using the conversion factors as specified in article 34. No Member country shall have less than five votes. Hence voting rights of Member countries with above the minimum number of votes shall be redistributed among Members with below the minimum number of votes.

4. If, for any reason, difficulties should arise in the determination or the updating of the statistical basis for the calculation of votes in accordance with the provisions of paragraphs 2 and 3 of this article, the Council may decide on a different statistical basis for the calculation of votes.

5. No Member except those mentioned in paragraphs 4 and 5 of article 4 shall have more than 400 votes. Any votes above this figure arising from the calculations in paragraphs 2, 3 and 4 of this article shall be redistributed among the other Members on the basis of those paragraphs.

6. When the membership in the Organization changes or when the voting rights of a Member are suspended or restored under any provision of this Agreement, the Council shall provide for the redistribution of votes in accordance with this article. The European Union or any intergovernmental Organization as defined in article 4 shall hold votes as a single Member according to the procedure set out in paragraphs 2 or 3 of this article.

7. There shall be no fractional votes.

Article 11. Voting procedure of the Council

1. Each Member shall be entitled to cast the number of votes it holds and no Member shall be entitled to divide its votes. A Member may, however, cast differently from such votes any votes which it is authorized to cast under paragraph 2 of this article.

2. By written notification to the Chairman of the Council, any exporting Member may authorize any other exporting Member, and any importing Member may authorize any other importing Member, to represent its interests and to cast its votes at any meeting of the Council. In this case the limitation provided for in paragraph 5 of article 10 shall not apply.

3. A Member authorized by another Member to cast the votes held by the authorizing Member under article 10 shall cast such votes in accordance with the instructions of the authorizing Member.

Article 12. Decisions of the Council

1. The Council shall endeavour to take all decisions and to make all recommendations by consensus. If consensus cannot be reached, the Council shall take decisions and make recommendations by a special vote, according to the following procedures:

(*a*) If the majority required by the special vote is not obtained because of the negative vote of more than three exporting or more than three importing Members, the proposal shall be considered as rejected;

(*b*) If the majority required by the special vote is not obtained because of the negative vote of three or less exporting or three or less importing Members, the proposal shall be put to a vote again within 48 hours; and

(*c*) If the majority required by the special vote is again not obtained, the proposal shall be considered as rejected.

2. In arriving at the number of votes necessary for any of the decisions or recommendations of the Council, votes of Members abstaining shall not be taken into consideration.

3. Members are committed to accept as binding all decisions of the Council under the provisions of this Agreement.

Article 13. Cooperation with other organizations

1. The Council shall make whatever arrangements are appropriate for consultation or cooperation with the United Nations and its organs, in particular the United Nations Conference on Trade and Development, and with the Food and Agriculture Organization of the United Nations and such other specialized agencies of the United Nations and intergovernmental organizations as may be appropriate.

2. The Council, bearing in mind the particular role of the United Nations Conference on Trade and Development in international commodity trade, shall, as appropriate, keep that organization informed of its activities and programmes of work.

3. The Council may also make whatever arrangements are appropriate for maintaining effective contact with international organizations of cocoa producers, traders and manufacturers.

4. The Council shall seek to involve the international financial agencies and other parties with an interest in the world cocoa economy in its work on cocoa production and consumption policy.

5. The Council may seek to cooperate with other relevant experts in cocoa matters.

Article 14. Invitation and admission of observers

1. The Council may invite any non-Member State to attend any of its meetings as an observer.

2. The Council may also invite any of the organizations referred to in article 13 to attend any of its meetings as an observer.

3. The Council may also invite non-governmental organizations having relevant expertise in aspects of the cocoa sector, as observers.

4. For each of its sessions, the Council shall decide on the attendance of observers, including, on an ad hoc basis, non-governmental organizations having relevant expertise in aspects of the cocoa sector, in conformity with the conditions set out in the administrative rules of the Organization.

Article 15. Quorum

1. The quorum for the opening meeting of any session of the Council shall be constituted by the presence of at least five exporting Members and a majority of importing Members, provided that such Members together hold in each category at least two thirds of the total votes of the Members in that category.

2. If there is no quorum in accordance with paragraph 1 of this article on the day appointed for the opening meeting of any session, on the second day, and throughout the remainder of the session, the quorum for the opening session shall be constituted by the presence of exporting and importing Members holding a simple majority of the votes in each category.

3. The quorum for meetings subsequent to the opening meeting of any session pursuant to paragraph 1 of this article shall be that prescribed in paragraph 2 of this article.

4. Representation in accordance with paragraph 2 of article 11 shall be considered as presence.

Chapter V. The Secretariat of the Organization

Article 16. The Executive Director and the staff of the Organization

1. The Secretariat shall consist of the Executive Director and the staff.

2. The Council shall appoint the Executive Director for a period of not more than the duration of the Agreement and its extensions, if any. The rules for selection of candidates and the terms of appointment of the Executive Director shall be fixed by the Council.

3. The Executive Director shall be the chief administrative officer of the Organization and shall be responsible to the Council for the administration and operation of this Agreement in accordance with the decisions of the Council.

4. The staff of the Organization shall be responsible to the Executive Director.

5. The Executive Director shall appoint the staff in accordance with regulations to be established by the Council. In drawing up such regulations, the Council shall have regard to those applying to officials of similar intergovernmental organizations. Staff appointments shall be made insofar as is practicable from exporting and importing Members.

6. Neither the Executive Director nor the staff shall have any financial interest in the cocoa industry, the cocoa trade, cocoa transportation or cocoa publicity.

7. In the performance of their duties, the Executive Director and the staff shall neither seek nor receive instructions from any Member or from any other authority external to the Organization. They shall refrain from any action which might reflect on their position as international officials responsible only to the Organization. Each Member undertakes to respect the exclusively international character of the responsibilities of the Executive Director and the staff and not to seek to influence them in the discharge of their responsibilities.

8. No information concerning the operation or administration of this Agreement shall be revealed by the Executive Director or the staff of the Organization, except as may be authorized by the Council or as is necessary for the proper discharge of their duties under this Agreement.

Article 17. Work programme

1. At the first session of the Council, after the entry into force of this agreement, the Executive Director shall submit a five-year strategic plan for review and approval by the Council. One year before the expiry of the five-year strategic plan, the Executive Director shall present a new draft of the five-year strategic plan to the Council.

2. At its last session of each cocoa year, and on the recommendation of the Economics Committee, the Council shall adopt a work programme for the Organization for the coming year prepared by the Executive Director. The work programme shall include projects, initiatives and activities to be undertaken by the Organization. The Executive Director shall implement the work programme.

3. During its last meeting of each cocoa year, the Economics Committee shall evaluate the implementation of the work programme for the current year on the basis of a report by the Executive Director. The Economics Committee shall report its findings to the Council.

Article 18. Annual report

The Council shall publish an annual report.

Chapter VI. The Administration and Finance Committee

Article 19. Establishment of the Administration and Finance Committee

1. An Administration and Finance Committee is hereby established. The Committee shall:

(*a*) Supervise, on the basis of a budget proposal presented by the Executive Director, the preparation of the draft administrative budget to be submitted to the Council;

(*b*) Carry out any other administrative and financial tasks which the Council assigns to it, including the monitoring of income and expenditure and matters related to the administration of the Organization.

2. The Administration and Finance Committee shall submit recommendations on the above matters to the Council.

3. The Council shall establish rules and regulations of the Administration and Finance Committee.

Article 20. Composition of the Administration and Finance Committee

1. The Administration and Finance Committee shall consist of six exporting Members on a rotational basis and six importing Members.

2. Each Member of the Administration and Finance Committee shall appoint one representative and if it so desires, one or more alternates. Members in each category shall be elected by the Council, on the basis of the votes held in accordance with article 10. Membership shall be for a two-year period, and shall be renewable.

3. The Chairman and Vice-Chairman shall be elected from among the representatives of the Administration and Finance Committee, for a period of two years. The posts of Chairman and Vice-Chairman shall alternate between exporting and importing Members.

Article 21. Meetings of the Administration and Finance Committee

1. The meetings of the Administration and Finance Committee shall be open to all other Members of the Organization as observers.

2. The Administration and Finance Committee shall normally meet at the headquarters of the Organization, unless it decides otherwise. If, on the invitation of any Member, the Administration and Finance Committee meets elsewhere than at the headquarters of the Organization, that Member shall pay the additional costs involved, as defined in the administrative rules of the Organization.

3. The Administration and Finance Committee shall normally meet twice a year and report on its proceedings to the Council.

Chapter VII. Finance

Article 22. Finance

1. There shall be kept an administrative account for the administration of this Agreement. The expenses necessary for the administration of this Agreement shall be brought into the administrative account and shall be met by annual contributions from Members assessed in accordance with article 24. If, however, a Member requests special services, the Council may decide to accede to the request and shall require that Member to pay for them.

2. The Council may establish separate accounts for specific purposes that it may establish in accordance with the objectives of the present Agreement. These accounts shall be financed through voluntary contributions from Members or other bodies.

3. The financial year of the Organization shall be the same as the cocoa year.

4. The expenses of delegations to the Council, to the Administration and Finance Committee, to the Economics Committee and to any of the Committees of the Council or of the Administration and Finance Committee and Economics Committee, shall be met by the Members concerned.

5. If the financial position of the Organization is or appears likely to be insufficient to finance the remainder of the cocoa year, the Executive Director shall call a special session of the Council within 15 days unless the Council is otherwise scheduled to meet within 30 calendar days.

Article 23. Liabilities of Members

A Member's liability to the Council and to other Members is limited to the extent of its obligations regarding contributions specifically provided for in this Agreement. Third parties dealing with the Council shall be deemed to have notice of the provisions of this Agreement regarding the powers of the Council and the obligations of the Members, in particular, paragraph 2 of article 7 and the first sentence of this article.

Article 24. Approval of the administrative budget and assessment of contributions

1. During the second half of each financial year, the Council shall approve the administrative budget of the Organization for the following financial year, and shall assess the contribution of each Member to that budget.

2. The contribution of each Member to the administrative budget for each financial year shall be in the proportion which the number of its votes at the time the administrative budget for that financial year is approved bears to the total votes of all the Members. For the purpose of assessing contributions, the votes of each Member shall be calculated without regard to the suspension of any Member's voting rights and any redistribution of votes resulting therefrom.

3. The initial contribution of any Member joining the Organization after the entry into force of this Agreement shall be assessed by the Council on the basis of the number of votes to be held by that Member and the period remaining in the current financial year, but the assessment made upon other Members for the current financial year shall not be altered.

4. If this Agreement enters into force before the beginning of the first full financial year, the Council shall, at its first session, approve an administrative budget covering the period up to the commencement of the first full financial year.

Article 25. Payment of contributions to the administrative budget

1. Contributions to the administrative budget for each financial year shall be payable in freely convertible currencies, shall be exempt from foreign exchange restrictions and shall become due on the first day of that financial year. Contributions of Members in respect of the financial year in which they join the Organization shall be due on the date on which they become Members.

2. Contributions to the administrative budget approved under paragraph 4 of article 24 shall be payable within three months of the date of assessment.

3. If, at the end of four months after the beginning of the financial year or, in the case of a new Member, three months after the Council has assessed its contribution, a Member

has not paid its full contribution to the administrative budget, the Executive Director shall request that Member to make payment as quickly as possible. If, at the expiration of two months after the request of the Executive Director, that Member has still not paid its contribution, the voting rights of that Member in the Council, the Administration and Finance Committee and the Economics Committee shall be suspended until such time as it has made full payment of the contribution.

4. A Member whose voting rights have been suspended under paragraph 3 of this article shall not be deprived of any of its other rights or relieved of any of its obligations under this Agreement unless the Council decides otherwise. It shall remain liable to pay its contribution and to meet any other financial obligations under this Agreement.

5. The Council shall consider the question of membership of any Member with two years' contributions unpaid, and may decide that this Member shall cease to enjoy the rights of membership and/or cease to be assessed for budgetary purposes. It shall remain liable to meet any other of its financial obligations under this Agreement. By payment of the arrears the Member will regain the rights of membership. Any payments made by Members in arrears will be credited first to those arrears, rather than to current contributions.

Article 26. Audit and publication of accounts

1. As soon as possible, but not later than six months after the close of each financial year, the statement of the Organization's accounts for that financial year and the balance sheet at the close of that financial year under the accounts referred to in article 22 shall be audited. The audit shall be carried out by an independent auditor of recognized standing, to be elected by the Council for each financial year.

2. The terms of appointment of the independent auditor of recognized standing, as well as the intentions and objectives of the audit, shall be laid down in the financial regulations of the Organization. The audited statement of the Organization's accounts and the audited balance sheet shall be presented to the Council at its next regular session for approval.

3. A summary of the audited accounts and balance sheet shall be published.

Chapter VIII. The Economics Committee

Article 27. Establishment of the Economics Committee

1. An Economics Committee is hereby established. The Economics Committee shall:

(*a*) Review cocoa statistics and statistical analyses of cocoa production and consumption, stocks and grindings, international trade and cocoa prices;

(*b*) Examine analyses of market trends and of other factors influencing such trends, with particular regard to cocoa supply and demand, including the effect of the use of cocoa butter substitutes on consumption and on the international cocoa trade;

(*c*) Analyse information on market access for cocoa and cocoa products in producing and consuming countries including information on tariff and non-tariff barriers as

well as the activities undertaken by Members with the view to promoting the elimination of trade barriers;

(*d*) Examine and recommend to the Council projects for funding by the Common Fund for Commodities (CFC) or other donor agencies;

(*e*) Address issues regarding the economic dimension of sustainable development in the cocoa economy;

(*f*) Review the draft annual work programme of the Organization in cooperation with the Administration and Finance Committee as appropriate;

(*g*) Prepare international cocoa conferences and seminars, at the request of the Council; and

(*h*) Deal with any other matters as approved by the Council.

2. The Economics Committee shall submit recommendations on the above matters to the Council.

3. The Council shall establish the rules and regulations of the Economics Committee.

Article 28. Composition of the Economics Committee

1. The Economics Committee shall be open to all Members of the Organization.

2. The Chairman and the Vice-Chairman of the Economics Committee shall be elected from among the Members for a period of two years. The posts of Chairman and Vice-Chairman shall alternate between exporting and importing Members.

Article 29. Meetings of the Economics Committee

1. The Economics Committee shall normally meet at the headquarters of the Organization, unless it decides otherwise. If, on the invitation of any Member, the Economics Committee meets elsewhere than at the headquarters of the Organization, that Member shall pay the additional costs involved, as defined in the administrative rules of the Organization.

2. The Economics Committee shall normally meet twice a year coinciding with the sessions of the Council. The Economics Committee shall report on its proceedings to the Council.

Chapter IX. Market transparency

Article 30. Information and market transparency

1. The Organization shall act as a global information centre for the efficient collection, collation, exchange and dissemination of statistical information and studies on all matters relating to cocoa and cocoa products. To this effect, the Organization shall:

(*a*) Maintain up-to-date statistical information on world production, grindings, consumption, exports, re-exports, imports, prices and stocks of cocoa and cocoa products;

(*b*) Request, as appropriate, technical information on the cultivation, marketing, transportation, processing, utilization and consumption of cocoa.

2. The Council may request Members to provide the information related to cocoa which it deems necessary for its functioning, including information on government policies, taxation, national standards, regulations and legislation relating to cocoa.

3. In order to promote market transparency, Members shall, insofar as possible, provide the Executive Director with the relevant statistics within a reasonable time and in as detailed and accurate a manner as is practicable.

4. If a Member fails to supply, or finds difficulty in supplying, within a reasonable time, statistical information required by the Council for the proper functioning of the Organization, the Council may request the Member concerned to explain the reasons for non-compliance. If it is found that assistance is needed in the matter, the Council may offer the necessary measures of support to overcome existing difficulties.

5. The Council shall publish at an appropriate date, but at least twice every cocoa year, projections on cocoa production and cocoa grindings. The Council may use relevant information from other sources in order to follow the evolution of the market as well as assess or evaluate the current and possible future cocoa production and consumption levels. However, the Council may not publish any information likely to disclose the operation of individuals or commercial entities that produce, process or distribute cocoa.

Article 31. Stocks

1. In order to facilitate the assessment of world cocoa stocks with a view to ensuring greater market transparency, each Member shall provide, on a yearly basis, and not later than the end of May, the Executive Director with information on stocks of cocoa beans and cocoa products held in its country, in accordance with Article 30, paragraph 3.

2. The Executive Director shall take the necessary steps to obtain the full cooperation of the private sector in this exercise, whilst fully respecting the issues of commercial confidentiality associated with this information.

3. The Executive Director shall make an annual report to the Economics Committee on the information received on the levels of stocks of cocoa beans and cocoa products worldwide.

Article 32. Cocoa substitutes

1. Members recognize that the use of substitutes may have negative effects on the expansion of cocoa consumption and the development of a sustainable cocoa economy. In this regard, Members shall take full account of the recommendations and decisions of competent international bodies, in particular the provisions of the *Codex Alimentarius*.

2. The Executive Director shall make regular reports to the Economics Committee on the development of the situation. On the basis of these reports, the Economics Committee shall assess the situation and, if necessary, make recommendations to the Council for appropriate decisions.

Article 33. Indicator price

1. For the purposes of this Agreement and, in particular, for monitoring the evolution of the cocoa market, the Executive Director shall compute and publish the ICCO indicator

price for cocoa beans. This price shall be expressed in United States dollars per tonne as well as in Euros, Pounds Sterling and Special Drawing Rights (SDRs) per tonne.

2. The ICCO indicator price shall be the average of the daily quotations for cocoa beans of the nearest three active futures trading months on the London market (NYSE Liffe) and on the New York market (ICE Futures US) at the time of the London close. The London prices shall be converted into United States dollars per tonne by using the current six months forward rate of exchange in London at closing time. The United States dollar-denominated average of the London and New York prices shall be converted into its Euro and Pound Sterling equivalents by using the spot rates of exchange in London at closing time and its SDR equivalent at the appropriate daily official United States dollar/SDR exchange rate published by the International Monetary Fund. The Council shall decide the method of calculation to be used when the quotations on only one of these two cocoa markets are available or when the London Foreign Exchange market is closed. The time for shift to the next three-month period shall be the fifteenth of the month immediately preceding the nearest active maturing month.

3. The Council may decide on any other method of computing the ICCO indicator price if it considers such other method to be more satisfactory than that prescribed in this article.

Article 34. Conversion factors

1. For the purpose of determining the beans equivalent of cocoa products, the following shall be the conversion factors: cocoa butter 1.33; cocoa cake and powder 1.18; cocoa paste/liquor and nibs 1.25. The Council may determine, if necessary, that other products containing cocoa are cocoa products. The conversion factors for cocoa products other than those for which conversion factors are set out in this paragraph shall be fixed by the Council.

2. The Council may revise the conversion factors in paragraph 1 of this article.

Article 35. Scientific research and development

The Council shall encourage and promote scientific research and development in the areas of cocoa production, transportation, processing, marketing and consumption as well as the dissemination and practical application of the results obtained in this field. To this end, the Organization may cooperate with international organizations, research institutions and the private sector.

Chapter X. Market development

Article 36. Market analyses

1. The Economics Committee shall analyse trends and prospects for development in cocoa-producing and -consuming sectors, as well as the movement of stocks and prices, and shall identify any market imbalances at an early stage.

2. At its first session after the start of a new cocoa year, the Economics Committee shall examine annual forecasts of world production and consumption for the next five cocoa years. The forecasts provided shall be reviewed and revised, if necessary, every year.

3. The Economics Committee shall submit detailed reports to each regular session of the Council. On the basis of these reports, the Council will examine the general situation, and in particular will review trends in world supply and demand. The Council may make recommendations to its members on the basis of this review.

4. On the basis of these forecasts, and in order to deal with the problems of market imbalances in the medium and long term, the exporting Members may undertake to coordinate their national production policies.

Article 37. Consumption promotion

1. Members undertake to encourage the consumption of chocolate and the use of cocoa products, improve the quality of products and develop markets for cocoa, including in exporting Member countries. Each Member shall be responsible for the means and methods it employs for that purpose.

2. All Members shall endeavour to remove or reduce substantially domestic obstacles to the expansion of cocoa consumption. In this regard, Members shall regularly provide the Executive Director with information on pertinent domestic regulations and measures and with other information concerning cocoa consumption, including domestic taxes and customs tariffs.

3. The Economics Committee shall establish a programme for the promotion activities of the Organization which may comprise information campaigns, research, capacity-building and studies related to the production and consumption of cocoa. The Organization shall seek the collaboration of the private sector for the implementation of those activities.

4. The promotion activities shall be included in the annual work programme of the Organization and may be financed by resources pledged by Members, non-Members, other organizations and the private sector.

Article 38. Studies, surveys and reports

1. In order to assist Members, the Council shall encourage the preparation of studies, surveys, technical reports and other documents on the economics of cocoa production and distribution, including trends and projections, the impact of governmental measures in exporting and importing countries on the production and consumption of cocoa, the analysis of the cocoa value chain, approaches to managing financial and other risks, sustainability aspects of the cocoa sector, opportunities for expansion of cocoa consumption for traditional and possible new uses, links between cocoa and health and the effects of the operation of this Agreement on exporters and importers of cocoa, including their terms of trade.

2. It may also promote studies likely to contribute to greater market transparency and facilitate the development of a balanced and sustainable world cocoa economy.

3. In order to carry out the provisions of paragraphs 1 and 2 of this article, the Council, upon recommendations of the Economics Committee, may adopt the list of studies, surveys and reports to be included in the annual work programme in conformity with the provisions of article 17 of this Agreement. These activities may be financed either from provisions within the administrative budget or from other sources.

Chapter XI. Fine or flavour cocoa

Article 39. Fine or flavour cocoa

1. The Council shall, at its first session following the entry into force of this Agreement, review annex C of this Agreement and, if necessary, revise it determining the proportions in which the countries listed therein produce and export exclusively or partially fine or flavour cocoa. Thereafter, the Council may at any time during the lifetime of this Agreement review annex C and, if necessary, revise it. The Council shall seek expert advice on this matter, as appropriate. In such cases, the composition of the Panel of Experts should, as far as possible, ensure a balance between experts from importing countries and experts from exporting countries. The Council shall decide on the composition of and on the procedures to be followed by the Panel of Experts.

2. The Economics Committee may make proposals for the Organization to devise and implement a system of statistics on production of and trade in fine or flavour cocoa.

3. Giving due consideration to the importance of fine or flavour cocoa, Members shall examine, and adopt as appropriate, projects relating to fine or flavour cocoa in accordance with the provisions of articles 37 and 43.

Chapter XII. Projects

Article 40. Projects

1. Members may submit project proposals which contribute to the achievement of the objectives of this Agreement and the priority areas for work identified in the five-year strategic plan referred to in paragraph 1 of article 17.

2. The Economics Committee shall examine project proposals and make recommendations to the Council, according to the mechanisms and procedures for submission, appraisal, approval, prioritization and funding of projects, as established by the Council. The Council may, as appropriate, establish mechanisms and procedures for the implementation and monitoring of projects, as well as the wide dissemination of their results.

3. At each meeting of the Economics Committee, the Executive Director shall report on the status of all projects approved by the Council, including those awaiting financing, under implementation or completed. A summary shall be presented to the Council pursuant to paragraph 2 of article 27.

4. As a general rule, the Organization shall act as supervisory body during project execution. The overhead costs incurred by the Organization for the preparation, management, supervision and evaluation of projects shall be included in the total costs of projects. These overhead costs shall not exceed 10 per cent of the total costs of any project.

Article 41. Relationship with the Common Fund for Commodities and other multilateral and bilateral donors

1. The Organization shall take full advantage of the facilities of the Common Fund for Commodities in order to assist in the preparation and financing of projects of interest to the cocoa economy.

2. The Organization shall endeavour to cooperate with other international organizations, as well as with multilateral and bilateral donor agencies, in order to obtain financing for programmes and projects of interest to the cocoa economy as appropriate.

3. Under no circumstances shall the Organization undertake any financial obligations related to projects, either on its own behalf or in the name of Members. No Member of the Organization shall be responsible by reason of its membership of the Organization for any liability arising from borrowing or lending by any other Member or entity in connection with such projects.

Chapter XIII. Sustainable development

Article 42. Standard of living and working conditions

Members shall give consideration to improving the standard of living and working conditions of populations engaged in the cocoa sector, consistent with their stage of development, bearing in mind internationally recognized principles and applicable ILO standards. Furthermore, Members agree that labour standards shall not be used for protectionist trade purposes.

Article 43. Sustainable cocoa economy

1. Members shall make all necessary efforts to accomplish a sustainable cocoa economy, taking into account the sustainable development principles and objectives contained, inter alia, in the Rio Declaration on Environment and Development and in Agenda 21 adopted in Rio de Janeiro in 1992, the United Nations Millennium Declaration adopted in New York in 2000, the Report of the World Summit on Sustainable Development held in Johannesburg in 2002, the 2002 Monterrey Consensus on Financing for Development, and the 2001 Ministerial Declaration on the Doha Development Agenda.

2. The Organization shall, upon request, assist Members to fulfil their goals in the development of a sustainable cocoa economy in accordance with article 1, paragraph (e) and article 2, paragraph 14.

3. The Organization shall serve as a focal point for a permanent dialogue amongst stakeholders as appropriate to foster the development of a sustainable cocoa economy.

4. The Organization shall encourage cooperation between Members through activities which help to ensure a sustainable cocoa economy.

5. The Council shall adopt and periodically review programmes and projects related to a sustainable cocoa economy and in accordance with paragraph 10f this article.

6. The Organization shall actively seek the assistance and support of multilateral and bilateral donors for the execution of programmes, projects and activities aimed at achieving a sustainable cocoa economy.

Chapter XIV. The Consultative Board on the World Cocoa Economy

Article 44. Establishment of the Consultative Board on the World Cocoa Economy

1. A Consultative Board on the World Cocoa Economy (herein after called the Board) is hereby established to encourage the active participation of experts from the private sec-

tor in the work of the Organization and to promote a continuous dialogue among experts from the public and private sectors.

2. The Board shall be an advisory body which advises the Council on issues of general and strategic interest to the cocoa sector, which include:

(*a*) The long-term structural developments in supply and demand;

(*b*) The ways and means of strengthening the position of cocoa farmers, with a view to improving their livelihoods;

(*c*) Proposals to encourage the sustainable production, trade and use of cocoa;

(*d*) The development of a sustainable cocoa economy;

(*e*) The elaboration of the modalities and frameworks for promotion of consumption; and

(*f*) Any other cocoa-related matters within the scope of the Agreement.

3. The Board shall assist the Council in gathering information on production, consumption and stocks.

4. The Board shall submit its recommendations on the above matters to the Council for consideration.

5. The Board may set up ad hoc working groups to assist in fulfilling its mandate provided that their operating costs have no budgetary implications for the Organization.

6. Upon its establishment, the Board shall draw up its own rules and recommend them for adoption by the Council.

Article 45. Composition of the Consultative Board on the World Cocoa Economy

1. The Consultative Board on the World Cocoa Economy shall be composed of experts from all sectors of the cocoa economy, such as:

(*a*) Associations from the trade and industry;

(*b*) National and regional cocoa producer organizations, from both the public and private sectors;

(*c*) National cocoa exporters' organizations and farmers' associations;

(*d*) Cocoa research institutes; and

(*e*) Other private sector associations or institutions having an interest in the cocoa economy.

2. These experts shall act in their personal capacity or on behalf of their respective associations.

3. The Board shall be composed of eight experts from exporting countries and eight experts from importing countries as defined in paragraph 1 of this article. These experts shall be appointed by the Council every two cocoa years. The members of the Board may designate one or more alternates and advisers to be approved by the Council. In the light of the experience of the Board, the Council may increase the number of members of the Board.

4. The Chairman of the Board shall be chosen from among its members. The chairmanship shall alternate between exporting and importing countries every two cocoa years.

Article 46. Meetings of the Consultative Board on the World Cocoa Economy

1. The Consultative Board on the World Cocoa Economy shall normally meet at the headquarters of the Organization, unless the Council decides otherwise. If, on invitation of any Member, the Consultative Board meets elsewhere than at the headquarters of the Organization, that Member shall pay the additional costs involved, as defined in the administrative rules of the Organization.

2. The Board shall normally meet twice a year alongside the regular sessions of the Council. The Board shall report regularly to the Council on its proceedings.

3. The meetings of the Consultative Board on the World Cocoa Economy shall be open to all Members of the Organization as observers.

4. The Board may also invite eminent experts or personalities of high standing in a specific field, from the public and private sectors, including appropriate non-governmental organizations, having relevant expertise in aspects of the cocoa sector, to participate in its work and meetings.

Chapter XV. Relief from obligations and differential and remedial measures

Article 47. Relief from obligations in exceptional circumstances

1. The Council may relieve a Member of an obligation on account of exceptional or emergency circumstances, force majeure or international obligations under the Charter of the United Nations for territories administered under the trusteeship system.

2. The Council, in granting relief to a Member under paragraph 1 of this article, shall state explicitly the terms and conditions on which, and the period for which, the Member is relieved of the obligation and the reasons for which the relief is granted.

3. Notwithstanding the foregoing provisions of this article, the Council shall not grant relief to a Member in respect of the obligation under article 25 to pay contributions, or the consequences of a failure to pay them.

4. The basis for the calculation of the distribution of votes of an exporting Member for which the Council has recognized a case of force majeure, shall be the effective volume of its exports for the year in which the force majeure occurred and subsequently for the ensuing three years following the force majeure.

Article 48. Differential and remedial measures

Developing importing Members, and least developed countries which are Members, whose interests are adversely affected by measures taken under this Agreement may apply to the Council for appropriate differential and remedial measures. The Council shall consider taking such appropriate measures in the light of the provisions of resolution 93 (IV) adopted by the United Nations Conference on Trade and Development.

Chapter XVI. Consultations, disputes and complaints

Article 49. Consultations

Each member shall accord full and due consideration to any representations made to it by another member concerning the interpretation or application of this Agreement and shall afford adequate opportunity for consultations. In the course of such consultations, on the request of either party and with the consent of the other, the Executive Director shall establish an appropriate conciliation procedure. The costs of such a procedure shall not be chargeable to the Organization. If such a procedure leads to a solution, this shall be reported to the Executive Director. If no solution is reached, the matter may, at the request of either party, be referred to the Council in accordance with article 50.

Article 50. Disputes

1. Any dispute concerning the interpretation or application of this Agreement which is not settled by the parties to the dispute shall, at the request of either party to the dispute, be referred to the Council for decision.

2. When a dispute has been referred to the Council under paragraph 1 of this article and has been discussed, Members holding not less than one third of the total votes, or any five Members, may require the Council, before giving its decision, to seek the opinion on the issues in dispute of an ad hoc advisory panel to be constituted as described in paragraph 3 of this article.

3. (*a*) Unless the Council decides otherwise, the ad hoc advisory panel shall consist of:

(i) Two persons, one having wide experience in matters of the kind in dispute and the other having legal standing and experience, nominated by the exporting Members;

(ii) Two persons, one having wide experience in matters of the kind in dispute and the other having legal standing and experience, nominated by the importing Members; and

(iii) A chairman selected unanimously by the four persons nominated under (i) and (ii) above or, if they fail to agree, by the Chairman of the Council.

(*b*) Nationals of Members shall not be ineligible to serve on the ad hoc advisory panel.

(*c*) Persons appointed to the ad hoc advisory panel shall act in their personal capacities and without instructions from any Government.

(*d*) The costs of the ad hoc advisory panel shall be paid by the Organization.

4. The opinion of the ad hoc advisory panel and the reasons therefore shall be submitted to the Council, which, after considering all the relevant information, shall decide the dispute.

Article 51. Complaints and action by the Council

1. Any complaint that any Member has failed to fulfil its obligations under this Agreement shall, at the request of the Member making the complaint, be referred to the Council, which shall consider it and take a decision on the matter.

2. Any finding by the Council that a Member is in breach of its obligations under this Agreement shall be made by a simple distributed majority vote and shall specify the nature of the breach.

3. Whenever the Council, whether as a result of a complaint or otherwise, finds that a Member is in breach of its obligations under this Agreement, it may, without prejudice to such other measures as are specifically provided for in other articles of this Agreement, including article 60:

(*a*) Suspend that Member's voting rights in the Council; and

(*b*) If it considers it necessary, suspend additional rights of such Member, including that of being eligible for, or of holding, office in the Council or in any of its committees, until it has fulfilled its obligations.

4. A Member whose voting rights are suspended under paragraph 3 of this article shall remain liable for its financial and other obligations under this Agreement.

Chapter XVII. Final provisions

Article 52. Depositary

The Secretary-General of the United Nations is hereby designated as the Depositary of this Agreement.

Article 53. Signature

This Agreement shall be open for signature at United Nations Headquarters from 1 October 2010 until and including 30 September 2012 by parties to the International Cocoa Agreement, 2001, and Governments invited to the United Nations Cocoa Conference, 2010. The Council under the International Cocoa Agreement, 2001, or the Council under this Agreement may, however, extend once the period of signature of this Agreement. The Council shall immediately notify the Depositary of such extension.

Article 54. Ratification, acceptance, approval

1. This Agreement shall be subject to ratification, acceptance or approval by the signatory Governments in accordance with their respective constitutional procedures. Instruments of ratification, acceptance or approval shall be deposited with the Depositary.

2. Each Contracting Party shall notify the Secretary-General whether it is an exporting Member or an importing Member at the time of deposit of its instrument of ratification, acceptance or approval or as soon as possible thereafter.

Article 55. Accession

1. This Agreement shall be open to accession by the Government of any State entitled to sign it.

2. The Council shall determine under which of the annexes to this Agreement the acceding State is to be deemed to be listed, if such State is not listed in any of these annexes.

3. Accession shall be effected by deposit of an instrument of accession with the Depositary.

Article 56. Notification of provisional application

1. A signatory Government which intends to ratify, accept or approve this Agreement or a Government which intends to accede to the Agreement, but which has not yet been able to deposit its instrument, may at any time notify the Depositary that, in accordance with its constitutional procedures and/or its domestic laws and regulations, it will apply this Agreement provisionally either when it enters into force in accordance with article 57 or, if it is already in force, at a specified date. Each Government giving such notification shall inform the Secretary-General whether it is an exporting Member or an importing Member at the time of giving such notification or as soon as possible thereafter.

2. A Government which has notified under paragraph 1 of this article that it will apply this Agreement either when it enters into force or at a specified date shall, from that time, be a provisional Member. It shall remain a provisional Member until the date of deposit of its instrument of ratification, acceptance, approval or accession.

Article 57. Entry into force

1. This Agreement shall enter into force definitively on 1 October 2012, or any time thereafter, if by such date Governments representing at least five exporting countries accounting for at least 80 per cent of the total exports of countries listed in annex A and Governments representing importing countries having at least 60 per cent of total imports as set out in annex B have deposited their instruments of ratification, acceptance, approval or accession with the Depositary. It shall also enter into force definitively once it has entered into force provisionally and these percentage requirements are satisfied by the deposit of instruments of ratification, acceptance, approval or accession.

2. This Agreement shall enter into force provisionally on 1 January 2011 if by such date Governments representing at least five exporting countries accounting for at least 80 per cent of the total exports of countries listed in annex A and Governments representing importing countries having at least 60 per cent of total imports as set out in annex B have deposited their instruments of ratification, acceptance, approval or accession, or have notified the Depositary that they will apply this Agreement provisionally when it enters into force. Such Governments shall be provisional Members.

3. If the requirements for entry into force under paragraph 1 or paragraph 2 of this article have not been met by 1 September 2011, the Secretary-General of the United Nations Conference on Trade and Development shall, at the earliest time practicable, convene a meeting of those Governments which have deposited instruments of ratification, acceptance, approval or accession, or have notified the Depositary that they will apply this Agreement provisionally. These Governments may decide whether to put this Agreement into force definitively or provisionally among themselves, in whole or in part, on such date as they may determine or to adopt any other arrangement as they may deem necessary.

4. For a Government on whose behalf an instrument of ratification, acceptance, approval or accession or a notification of provisional application is deposited after the entry into force of this Agreement in accordance with paragraph 1, paragraph 2 or paragraph 3 of this article, the instrument or notification shall take effect on the date of such deposit and, with regard to notification of provisional application, in accordance with the provisions of paragraph 1 of article 56.

Article 58. Reservations

Reservations may not be made with respect to any of the provisions of this Agreement.

Article 59. Withdrawal

1. At any time after the entry into force of this Agreement, any Member may withdraw from this Agreement by giving written notice of withdrawal to the Depositary. The Member shall immediately inform the Council of the action it has taken.

2. Withdrawal shall become effective 90 days after the notice is received by the Depositary. If, as a consequence of withdrawal, membership in this Agreement falls below the requirements provided for in paragraph 1 of article 57 for its entry into force, the Council shall meet in special session to review the situation and to take appropriate decisions.

Article 60. Exclusion

If the Council finds, under paragraph 3 of article 51, that any Member is in breach of its obligations under this Agreement and decides further that such breach significantly impairs the operation of this Agreement, it may exclude such Member from the Organization. The Council shall immediately notify the Depositary of any such exclusion. Ninety days after the date of the Council's decision, that Member shall cease to be a member of the Organization.

Article 61. Settlement of accounts with withdrawing or excluded Members

The Council shall determine any settlement of accounts with a withdrawing or excluded Member. The Organization shall retain any amounts already paid by a withdrawing or excluded Member, and such Member shall remain bound to pay any amounts due from it to the Organization at the time the withdrawal or the exclusion becomes effective, except that, in the case of a Contracting Party which is unable to accept an amendment and consequently ceases to participate in this Agreement under the provisions of paragraph 2 of article 63, the Council may determine any settlement of accounts which it finds equitable.

Article 62. Duration, extension and termination

1. This Agreement shall remain in force until the end of the tenth full cocoa year after its entry into force, unless extended under paragraph 4 of this article, or terminated earlier under paragraph 5 of this article.

2. The Council shall review the present Agreement five years after its entry into force and shall take decisions as appropriate.

3. While this Agreement is in force, the Council may decide to renegotiate it with a view to having the renegotiated agreement enter into force at the end of the fifth cocoa year referred to in paragraph 1 of this article, or at the end of any period of extension decided upon by the Council under paragraph 4 of this article.

4. The Council may extend this Agreement in whole or in part for two periods not exceeding two cocoa years each. The Council shall notify the Depositary of any such extension.

5. The Council may at any time decide to terminate this Agreement. Such termination shall take effect on such date as the Council shall decide, provided that the obligations of Members under article 25 shall continue until the financial liabilities relating to the operation of this Agreement have been discharged. The Council shall notify the Depositary of any such decision.

6. Notwithstanding the termination of this Agreement by any means whatsoever, the Council shall remain in being for as long as necessary to carry out the liquidation of the Organization, settlement of its accounts and disposal of its assets. The Council shall have during that period the necessary powers for the conclusion of all administrative and financial matters.

7. Notwithstanding the provisions of paragraph 2 of article 59, a Member which does not wish to participate in this Agreement as extended under this article shall so inform the Depositary and the Council. Such Member shall cease to be a party to this Agreement from the beginning of the period of extension.

Article 63. Amendments

1. The Council may recommend an amendment of this Agreement to the Contracting Parties. The amendment shall become effective 100 days after the Depositary has received notifications of acceptance from Contracting Parties representing at least 75 per cent of the exporting Members holding at least 85 per cent of the votes of the exporting Members, and from Contracting Parties representing at least 75 per cent of the importing Members holding at least 85 per cent of the votes of the importing Members, or on such later date as the Council may have determined. The Council may fix a time within which Contracting Parties shall notify the Depositary of their acceptance of the amendment, and, if the amendment has not become effective by such time, it shall be considered withdrawn.

2. Any Member on behalf of which notification of acceptance of an amendment has not been made by the date on which such amendment becomes effective shall, as of that date, cease to participate in this Agreement, unless the Council decides to extend the period fixed for acceptance for such Member to enable it to complete its internal procedures. Such Member shall not be bound by the amendment before it has notified its acceptance thereof.

3. Immediately upon adoption of a recommendation for an amendment the Council shall communicate to the Depositary copies of the text of the amendment. The Council shall provide the Depositary with the information necessary to determine whether the notifications of acceptance received are sufficient to make the amendment effective.

Chapter XVIII. Supplementary and transitional provisions

Article 64. Special Reserve Fund

1. A Special Reserve Fund shall be maintained for the sole purpose of meeting the eventual liquidation expenses of the Organization. The Council shall decide how the interest earned on this Fund will be used.

2. The Special Reserve Fund established by the Council under the International Cocoa Agreement, 1993, shall be transferred to this Agreement for the purpose set out under paragraph 1.

3. A non-Member of the International Cocoa Agreements, 1993 and 2001, which becomes a Member of this Agreement shall be required to contribute to the Special Reserve Fund. The contribution of such Member shall be assessed by the Council on the basis of the number of votes to be held by the Member.

Article 65. Other supplementary and transitional provisions

1. This Agreement shall be considered as a replacement of the International Cocoa Agreement, 2001.

2. All acts by or on behalf of the Organization or any of its organs under the International Cocoa Agreement, 2001, which are in effect on the date of entry into force of this Agreement and the terms of which do not provide for expiry on that date shall remain in effect unless changed under the provisions of this Agreement.

Done at Geneva on 25 June 2010, the texts of this Agreement in the Arabic, Chinese, English, French, Russian and Spanish languages being equally authentic.

ANNEXES

Annex A

Exports of cocoa [a/] calculated for the purposes of article 57 (Entry into force)

Country	*b/*	*2005/06*	*2006/07*	*2007/08*	*Average 3-year period 2005/06—2007/08*	
			(tonnes)			*(Share)*
Côte d'Ivoire	m	1 349 639	1 200 154	1 191 377	1 247 057	38.75%
Ghana	m	648 687	702 784	673 403	674 958	20.98%
Indonesia		592 960	520 479	465 863	526 434	16.36%
Nigeria	m	207 215	207 075	232 715	215 668	6.70%
Cameroon	m	169 214	162 770	178 844	170 276	5.29%
Ecuador	m	108 678	110 308	115 264	111 417	3.46%
Togo	m	73 064	77 764	110 952	87 260	2.71%

Country	*b/*	*2005/06*	*2006/07*	*2007/08*	*Average 3-year period 2005/06—2007/08*	
			(tonnes)			*(Share)*
Papua New Guinea	m	50 840	47 285	51 588	49 904	1.55%
Dominican Republic	m	31 629	42 999	34 106	36 245	1.13%
Guinea		18 880	17 620	17 070	17 857	0.55%
Peru		15 414	11 931	11 178	12 841	0.40%
Brazil	m	57 518	10 558	- 32 512	11 855	0.37%
Bolivarian Republic of Venezuela	m	11 488	12 540	4 688	9 572	0.30%
Sierra Leone		4 736	8 910	14 838	9 495	0.30%
Uganda		8 270	8 880	8 450	8 533	0.27%
United Republic of Tanzania		6 930	4 370	3 210	4 837	0.15%
Solomon Islands		4 378	4 075	4 426	4 293	0.13%
Haiti		3 460	3 900	4 660	4 007	0.12%
Madagascar		2 960	3 593	3 609	3 387	0.11%
São Tomé & Príncipe		2 250	2 650	1 500	2 133	0.07%
Liberia		650	1 640	3 930	2 073	0.06%
Equatorial Guinea		1 870	2 260	1 990	2 040	0.06%
Vanuatu		1 790	1 450	1 260	1 500	0.05%
Nicaragua		892	750	1 128	923	0.03%
Congo, Dem. Rep. of		900	870	930	900	0.03%
Honduras		1 230	806	- 100	645	0.02%
Congo		90	300	1 400	597	0.02%
Panama		391	280	193	288	0.01%
Viet Nam		240	70	460	257	0.01%
Grenada		80	218	343	214	0.01%
Gabon	m	160	99	160	140	–
Trinidad and Tobago	m	193	195	- 15	124	–
Belize		60	30	20	37	–
Dominica		60	20	0	27	–

Country	b/	2005/06	2006/07 (tonnes)	2007/08	Average 3-year period 2005/06—2007/08	(Share)
Fiji		20	10	10	13	–
Total	**c/**	**3 376 836**	**3 169 643**	**3 106 938**	**3 217 806**	**100.00%**

Notes:

a/ Three-year average, 2005/06—2007/08 of net exports of cocoa beans plus net exports of cocoa products converted to beans equivalent using the following conversion factors: cocoa butter 1.33; cocoa powder and cake 1.18; cocoa paste/liquor 1.25.

b/ List restricted to countries which individually exported cocoa in the three-year period 2005/06 to 2007/08, based on information available to the ICCO Secretariat.

c/ Totals may differ from the sum of constituents due to rounding.

m Member of the International Cocoa Agreement, 2001 as at 9 November 2009.

- nil, negligible or less than the unit employed

Source: International Cocoa Organization, *Quarterly Bulletin of cocoa statistics*, Vol. XXXV, No. 3, Cocoa year 2008/09.

Annex B

Imports of cocoa[a/] calculated for the purpose of article 57 (Entry into force)

Country	b/	2005/06	2006/07 (tonnes)	2007/08	Average 3-year period 2005/06—2007/08	(Share)
European Union:	m	2 484 235	2 698 016	2 686 041	2 622 764	53.24%
Austria		*20 119*	*26 576*	*24 609*	*23 768*	*0.48%*
Belgium/Luxembourg		*199 058*	*224 761*	*218 852*	*214 224*	*4.35%*
Bulgaria		*12 770*	*14 968*	*12 474*	*13 404*	*0.27%*
Cyprus		*282*	*257*	*277*	*272*	*0.01%*
Czech Republic		*12 762*	*14 880*	*16 907*	*14 850*	*0.30%*
Denmark		*15 232*	*15 493*	*17 033*	*15 919*	*0.32%*
Estonia		*37 141*	*14 986*	*- 1 880*	*16 749*	*0.34%*
Finland		*10 954*	*10 609*	*11 311*	*10 958*	*0.22%*
France		*388 153*	*421 822*	*379 239*	*396 405*	*8.05%*
Germany		*487 696*	*558 357*	*548 279*	*531 444*	*10.79%*
Greece		*16 451*	*17 012*	*17 014*	*16 826*	*0.34%*
Hungary		*10 564*	*10 814*	*10 496*	*10 625*	*0.22%*
Ireland		*22 172*	*19 383*	*17 218*	*19 591*	*0.40%*

Country			2005/06	2006/07	2007/08	Average 3-year period 2005/06—2007/08
	b/			(tonnes)		(Share)
Italy			*126 949*	*142 128*	*156 277*	*141 785*	*2.88%*
Latvia			*2 286*	*2 540*	*2 434*	*2 420*	*0.05%*
Lithuania			*5 396*	*4 326*	*4 522*	*4 748*	*0.10%*
Malta			*34*	*46*	*81*	*54*	–
Netherlands			*581 459*	*653 451*	*681 693*	*638 868*	*12.97%*
Poland			*103 382*	*108 275*	*113 175*	*108 277*	*2.20%*
Portugal			*3 643*	*4 179*	*3 926*	*3 916*	*0.08%*
Romania			*11 791*	*13 337*	*12 494*	*12 541*	*0.25%*
Slovak Republic			*15 282*	*16 200*	*13 592*	*15 025*	*0.30%*
Slovenia			*1 802*	*2 353*	*2 185*	*2 113*	*0.04%*
Spain			*150 239*	*153 367*	*172 619*	*158 742*	*3.22%*
Sweden			*15 761*	*13 517*	*14 579*	*14 619*	*0.30%*
United Kingdom			*232 857*	*234 379*	*236 635*	*234 624*	*4.76%*
United States			822 314	686 939	648 711	719 321	14.60%
Malaysia	c/	m	290 623	327 825	341 462	319 970	6.49%
Russian Federation		m	163 637	176 700	197 720	179 352	3.64%
Canada			159 783	135 164	136 967	143 971	2.92%
Japan			112 823	145 512	88 403	115 579	2.35%
Singapore			88 536	110 130	113 145	103 937	2.11%
China			77 942	72 532	101 671	84 048	1.71%
Switzerland		m	74 272	81 135	90 411	81 939	1.66%
Turkey			73 112	84 262	87 921	81 765	1.66%
Ukraine			63 408	74 344	86 741	74 831	1.52%
Australia			52 950	55 133	52 202	53 428	1.08%
Argentina			33 793	38 793	39 531	37 372	0.76%
Thailand			26 737	31 246	29 432	29 138	0.59%
Philippines			18 549	21 260	21 906	20 572	0.42%
Mexico	c/		19 229	15 434	25 049	19 904	0.40%
Korea, Republic of			17 079	24 454	15 972	19 168	0.39%

Country		2005/06	2006/07	2007/08	Average 3-year period 2005/06—2007/08
	b/		(tonnes)		(Share)
South Africa		15 056	17 605	16 651	16 437	0.33%
Iran (Islamic Republic of)		10 666	14 920	22 056	15 881	0.32%
Colombia	c/	16 828	19 306	9 806	15 313	0.31%
Chile		13 518	15 287	15 338	14 714	0.30%
India		9 410	10 632	17 475	12 506	0.25%
Israel		11 437	11 908	13 721	12 355	0.25%
New Zealand		11 372	12 388	11 821	11 860	0.24%
Serbia		10 864	11 640	12 505	11 670	0.24%
Norway		10 694	11 512	12 238	11 481	0.23%
Egypt		6 026	10 085	14 036	10 049	0.20%
Algeria		9 062	7 475	12 631	9 723	0.20%
Croatia		8 846	8 904	8 974	8 908	0.18%
Syrian Arab Republic		7 334	7 229	8 056	7 540	0.15%
Tunisia		6 019	7 596	8 167	7 261	0.15%
Kazakhstan		6 653	7 848	7 154	7 218	0.15%
Saudi Arabia		6 680	6 259	6 772	6 570	0.13%
Belarus		8 343	3 867	5 961	6 057	0.12%
Morocco		4 407	4 699	5 071	4 726	0.10%
Pakistan		2 123	2 974	2 501	2 533	0.05%
Costa Rica		1 965	3 948	1 644	2 519	0.05%
Uruguay		2 367	2 206	2 737	2 437	0.05%
Lebanon		2 059	2 905	2 028	2 331	0.05%
Guatemala		1 251	2 207	1 995	1 818	0.04%
Bolivia	c/	1 282	1 624	1 927	1 611	0.03%
Sri Lanka		1 472	1 648	1 706	1 609	0.03%
El Salvador		1 248	1 357	1 422	1 342	0.03%
Azerbaijan		569	2 068	1 376	1 338	0.03%
Jordan		1 263	1 203	1 339	1 268	0.03%
Kenya		1 073	1 254	1 385	1 237	0.03%
Uzbekistan		684	1 228	1 605	1 172	0.02%

Country	b/	2005/06	2006/07	2007/08	Average 3-year period 2005/06—2007/08	
			(tonnes)			(Share)
Hong Kong, China		2 018	870	613	1 167	0.02%
Republic of Moldova		700	1 043	1 298	1 014	0.02%
Iceland		863	1 045	1 061	990	0.02%
The former Yugoslav Republic of Macedonia		628	961	1 065	885	0.02%
Bosnia and Herzegovina		841	832	947	873	0.02%
Cuba	c/	2 162	- 170	107	700	0.01%
Kuwait		427	684	631	581	0.01%
Senegal		248	685	767	567	0.01%
Libyan Arab Jamahiriya		224	814	248	429	0.01%
Paraguay		128	214	248	197	–
Albania		170	217	196	194	–
Jamaica	c/	479	- 67	89	167	–
Oman		176	118	118	137	–
Zambia		95	60	118	91	–
Zimbabwe		111	86	62	86	–
Saint Lucia	c/	26	20	25	24	–
Samoa		48	15	0	21	–
Saint Vincent and the Grenadines		6	0	0	2	–
Total	d/	4 778 943	5 000 088	5 000 976	4 926 669	100.00%

Notes:

a/ Three-year average, 2005/06—2007/08 of net imports of cocoa beans plus gross imports of cocoa products converted to beans equivalent using the following conversion factors: cocoa butter 1.33; cocoa powder and cake 1.18; cocoa paste/liquor 1.25.

b/ List restricted to countries which individually imported cocoa in the three-year period 2005/06 to 2007/08, based on information available to the ICCO Secretariat.

c/ Country may also qualify as an exporting country.

d/ Totals may differ from the sum of constituents due to rounding.

m Member of the International Cocoa Agreement, 2001 as at 9 November 2009.

- nil, negligible or less than the unit employed

Source: International Cocoa Organization, *Quarterly Bulletin of cocoa statistics*, Vol. XXXV, No. 3, Cocoa year 2008/09.

ANNEX C

Producing countries exporting exclusively or partially fine or flavour cocoa

Colombia	Madagascar
Costa Rica	Papua New Guinea
Dominica	Peru
Dominican Republic	Saint Lucia
Ecuador	São Tomé & Príncipe
Grenada	Trinidad and Tobago
Indonesia	Bolivarian Republic of Venezuela
Jamaica	

2. MULTILATERAL AGREEMENT FOR THE ESTABLISHMENT OF AN INTERNATIONAL THINK TANK FOR LANDLOCKED DEVELOPING COUNTRIES. NEW YORK, 24 SEPTEMBER 2010*

Preamble

The Landlocked Developing Countries (LLDCs), Parties to the present Agreement:

Referring to the outcomes of the International Ministerial Conference of Landlocked and Transit Developing Countries and Donor Countries and International Financial and Development Organizations and bodies of the United Nations system to mobilizing awareness at Addressing the Special Needs of Landlocked Developing Countries within a New Global Framework for Transit Transport Cooperation for Landlocked and Transit Developing Countries, held in Almaty, Kazakstan, in August 2003 and to the importance of full and effective implementation of the Almaty Programme of Action;

Recalling the resolution 58/201 of the General Assembly on 23 December 2003 adopting the outcome of the International Ministerial Conference and the Almaty Programme of Action, and the resolution A/Res/64/214 of the General Assembly on the 22 December that welcomed the establishment of the think tank for the landlocked developing countries in Ulaanbaatar;

Further recalling the Resolution A/Res/64/214 of the General Assembly on 22 December 2009 that welcomed the establishment of the International Think Tank for the landlocked developing countries in Ulaanbaatar to enhance analytical capability of landlocked developing countries and to promote the exchange of experience and best practices needed to maximize their coordinated efforts for the full and effective implementation of the Almaty Programme of Action and the Millennium Development Goals. In that resolution, the General Assembly invited the Office of the High representative for Least Developed Countries, Landlocked Developing Countries and Small Island Developing States, other relevant organizations of the United Nations system, Member States, as well as relevant

* Adopted on 24 September 2010 by the Foreign Ministers of the Group of Landlocked Developing Countries (LLDCs) at their ninth Annual Meeting in New York.

international and regional organizations, to assist the landlocked developing countries in implementing the activities of the international think tank;

Recalling the Ulaanbaatar Declaration adopted at the Meeting of Trade Ministers of LLDCs in August 2007, reaffirming the need for LLDCs to set up an international think tank, located at Ulaanbaatar and urging international organizations and donor countries to assist LLDC in achieving this project;

Recalling also the Final Outcome Document of the Mid-Term review of the Implementation of the Almaty Programme of Action, in New York, 3 October 2008, which welcomed the proposal to set up in Ulaanbaatar an international think tank to enhance analytical capability of landlocked developing countries in view to maximize the efficiency in implementing the Almaty Programme of Action;

Recalling, the Communiqué of the Eight Ministerial Meeting of LLDCs in New York, on the 25 September 2009, and the Ezulwini Declaration of the Third Meeting of LLDCs Trade Ministers in October 2009, which welcomed the establishment of the international think tank for the landlocked developing countries;

Recalling that the Group of Landlocked Developing Countries is composed of 31 Member States of the United Nations, that have no seacoast as defined in article 124 of the United Nations Convention on the Law of the Sea;

Referring to the Final Document of the XV Summit of Heads of State and Government of the Non Alignment Movement in Egypt in July 2009, that welcomed the Ulaanbaatar Declaration that adopted outcome documents of various meetings and conferences;

Further recognizing that lack of territorial access to the sea, aggravated by remoteness from world markets, and prohibitive transit costs and risks continue to impose serious constraints on export earnings, private capital inflow and domestic resource mobilization of landlocked developing countries and therefore adversely affect their overall growth and socio-economic development;

Recognizing also the need for LLDCs to establish a centre of excellence for analytical research and policy advice for LLDCs and contribute to strengthening analytical capacities of landlocked developing countries in key areas of economic growth and poverty reduction, in particular transit transport, aid for trade and trade facilitation, as well as provide to negotiators in LLDCs appropriate negotiation tools at World Trade Organization and other international institutions;

Stressing the need for close and effective cooperation among landlocked developing countries for the effective implementation of the Almaty Programme of Action;

Reaffirming the importance of establishing appropriate mechanisms to facilitate and promote cooperation within LLDCs and the need to expedite the operationalization and realization of the mandate of the international think tank with effective participation of all LLDCs and full support of international organizations and donor countries;

Have agreed the following:

Article I. Establishment and Headquarters of the International Think Tank

1.1. The Parties to this Agreement decide to establish the International Think Tank for Landlocked Developing Countries, hereinafter referred to as "The International Think Tank for LLDCs".

1.2. The Headquarters of the Think Tank is located at Ulaanbaatar, Mongolia. The Think Tank may be authorized by the Parties to have representations elsewhere.

Article II. Objectives of the International Think Tank

2.1. The overall goal of the International Think Tank is to use top-quality research and advocacy to improve the ability of landlocked developing countries to build capacity with a view to benefiting from the international trade including WTO negotiations, with the ultimate aim of raising human development and reducing poverty.

2.2. Within that framework, the International Think Tank shall pursue the following activities:

a) Producing and disseminating research and studies on trade-related topics, aid-for-trade, transport and transit, as well as databases on issues of interest to landlocked developing countries;

b) Promoting cooperation between landlocked developing countries with a view to strengthening their analytical capacity in key areas of transit transport, infrastructure investment, aid and trade facilitation, trade negotiations, poverty reduction and economic growth;

c) Sharing information, networking with a view to coming up with a better understanding of challenges facing landlocked developing countries;

d) Contributing to the formulation of strategies and policies aimed at the effective implementation of the Almaty Programme of Action through analytical studies and research on key issues;

e) Fostering convergent views and approaches among landlocked developing countries with respect to global economic issues of interest to landlocked developing countries, such as effects of the global economic and financial crisis, climate change and food security;

f) Establishing continual relationships with international organizations, including the United Nations system, and development partners, with a view to mobilizing awareness of special needs of landlocked developing countries and financial and technical resources for the implementation of identified studies and research;

g) Making available to all landlocked developing countries, development partners and other partner research institutions, publications, research results and studies for the use and benefit of landlocked developing countries.

Article III. Functions

In order to fulfill its objectives, the Think Tank shall:

3.1. Set up relationships with specialized institutions in landlocked developing countries, international organizations including United Nations system organizations among

others Office of the High Representative for the Least Developed Countries, Landlocked Developing Countries and Small Island Developing States, United Nations Development Programme, United Nations Conference on Trade and Development, United Nations University, World Bank, United Nations Regional Commissions, World Trade Organization, International Road Transport Union, World Customs Organization and donor countries, research institutions in landlocked developing countries and in other countries, as well as key private sector and civil society institutions, and convene working group meetings and online discussions on identified subjects pertinent to landlocked and transit developing countries;

3.2. Generate ideas and action-oriented proposals for consideration by the Group of Landlocked Developing Countries at its various meetings and conferences;

3.3. Develop a website to promote all activities achieved by landlocked developing countries in the implementation of the Almaty Programme of Action, both at national, regional and international levels, research results by the Think Tank and other partner institutions, studies and outcomes of key meetings, conferences and summits;

3.4. Collect, systematize, analyze and disseminate through the website and other means relevant information concerning landlocked developing countries, as well as actions and programmes developed by international organizations' and donor countries towards landlocked developing countries in the implementation of the Almaty Programme of Action.

Article IV. Membership and Organization of the Work of the Think Tank

4.1. Membership of the International Think Tank for Landlocked Developing Countries shall be open to all States who are Parties to this Agreement;

4.2. Representatives of

a) any Member State of the United Nations;

b) United Nations Institutions and related agencies as indicated in 3.1;

c) inter-governmental and non-governmental organizations; and

d) representatives from the private sector may be invited by the Board of Governors to join the Think Tank as Observers.

Article V. Organs

5.1. The Think Tank will consist of a Board of Governors and a Secretariat.

Article VI. Board of Governors

6.1. *a*) The Board of Governors, hereinafter called "The Board" shall be the highest authority established by the present Agreement. It shall be composed of a representative from each Member State that is party to the present Agreement;

b) Representatives to the Board shall be persons of high standing known for their commitment and contribution to the development of LLDCs and knowledgeable of key issues and challenges of trade policy and LLDCs;

c) The Executive Director of the Think Tank shall serve as Secretary of the Board of Governors and in such capacity, shall keep and circulate minutes of the meetings of the Board to its Members;

d) Observers may, at the Board discretion, be invited to attend meetings of the Board.

6.2. The Board may decide to set up an Advisory Council with the view to provide advices to the Board and Secretariat on issues of strategic and policy importance, including setting research and policy priorities for the Think Tank. Members of the Advisory Council shall also be called upon to provide peer review and support, including information dissemination and discussion for Think Tank's programs and initiatives. The Advisory Council shall comprise international scholars and policy practitioners with expertise in LLDCs affairs. The members of the Advisory Council may participate time to time in meetings of the Board.

6.3. The Board shall, at each regular session, elect a Chairperson and the Vice-Chairperson. The Chair and Vice-Chair shall hold office until the next regular session of the Board. The Chairperson, or in his/her absence the Vice-Chairperson, shall preside at meetings of the Board. If the Chairperson is unable to serve for the full session for which he/she has been elected, the Vice-Chairperson shall act as Chairperson for the remainder of that session.

6.4. The members of the Board will serve for two years, with the possibility of renewal only once.

6.5. The Board will formulate and adopt its rules of procedures.

6.6. The Board shall review and approve all aspects of the Think Tank's activities including its budget, its programme of work and fund raising activities. The Executive Director shall submit an annual report to the Board for its review and approval.

6.7. The Board shall meet once every year in ordinary session. Extraordinary meetings may be called upon by its Chairperson.

Article VII. The Secretariat

7.1. The Secretariat of the Think Tank, headed by the Executive Director, shall consist of a small team comprising of: Director of Operations, a Chief Analyst, researchers and analysts, and an Administrative and Finance Assistant. Its small size shall be kept to the minimum number necessary for the proper execution of the Think Tank's activities.

7.2. The Executive Director shall be responsible for assisting the Board, its Chairperson and Vice-Chairperson in the performance of their official functions.

7.3. The Secretariat shall, under the Executive Director's supervision, perform the following functions:

a) Preparation and implementation of the annual programme of work;

b) Preparation of the budget;

c) Preparation and review of the staff regulations and rules and financial regulations and rules, as well as any other administrative issuances that are needed for the effective functioning of the Think Tank;

d) Preparation and development of fund-raising plans and outreach communication programmes; and

e) Establishment of networks with international organizations, LLDCs experts, members of the academia as well as representatives of civil society and the private sector for purpose of facilitating the Think Tank's activities,

Article VIII. Finance

8.1. The Chairperson of the Board, with the assistance of the Executive Director, is responsible for mobilizing financial and technical resources meant at implementing International Think Tank for Landlocked Developing Countries' programmes and activities.

8.2. Member States will be requested to make voluntary contributions to the Think Tank's budget. The Think Tank will also be entrusted with the mandate to mobilize funds from international organizations and other development partners, including private organizations, in particular for funding of development programmes, such as research activities, economic studies, seminars and conferences.

8.3. The Board and the Executive Director shall mobilize appropriate resources meant at financing key activities of the Think Tank. Those resources will be deposited in a Trust Fund. The management of the Trust Fund will be agreed upon by the members of the Board.

8.4. The financial situation and perspectives of the Think Tank will be reviewed by an independent audit and submitted to the Board of Governors at one of its meetings.

Article IX. Privileges and Immunities of the Think Tank

9.1. The Think Tank shall have an international status and enjoy privileges and immunities usually granted to similar international organizations working in Mongolia. In that context, the Think Tank shall conclude an agreement with the host country relating to its status, the privileges and immunities accorded to the International Think Tank and its staff.

Article X. Signature, Ratification, Acceptance, Approval

10.1. The present Agreement shall be open to signature by Landlocked Developing Countries at the United Nations Headquarters in New York from 1 November 2010 until 31 October 2011.

10.2. The present Agreement shall be subject to ratification, acceptance or approval by signatory States.

10.3. Instruments of ratification, acceptance or approval shall be deposited with the depositary.

Article XI. Accession

11.1. The present Agreement shall be subject to accession by any Landlocked Developing Country which has not signed this Agreement. The instruments of accession shall be deposited with the depositary.

Article XII. Entry into Force

12.1. The present Agreement shall enter into force on the sixtieth day after the date of deposit of the tenth instrument of ratification, acceptance, approval or accession.

12.2. For each State which ratifies, accepts or approves this Agreement or accedes thereto after the deposit of the tenth instrument of ratification, acceptance, approval or accession, this Agreement shall enter into force on the sixtieth day after the date of deposit by such State of its instrument of ratification, acceptance, approval or accession.

Article XIII. Amendments

13.1. This Agreement may be modified by written agreement between the Parties. Any State Party may propose an amendment to the present Agreement. The Executive-Director shall communicate any proposed amendment to States Parties. Any amendment shall be adopted by a majority of two-thirds of the States Parties. The text of any adopted amendment shall be submitted to the depositary who shall communicate it to States Parties.

13.2. An amendment adopted in accordance with paragraph I of this article shall enter into force on the sixtieth day after the instruments of acceptance are deposited by all States Parties. Instruments of acceptance of the amendments shall be deposited with the depositary. A State that becomes Party after the entry into force of the amendment shall be bound by the Agreement as amended.

Article XIV. Dispute Settlement

14.1. Any dispute between the Parties concerning the interpretation or application of this Agreement shall be settled by negotiations or other agreed mode of settlement.

Article XV. Depository

15.1. The Secretary-General of the United Nations shall be the depositary of the present Agreement.

In witness whereof, the undersigned representatives, duly authorized by their respective Governments, have signed this Agreement.

Done in New York, on 24 September of 2010 in a single copy in English.

3. Central African Convention for the control of small arms and light weapons, their ammunition and all parts and components that can be used for their manufacture, repair and assembly. Kinshasa, 30 April 2010*

Preamble

We, Heads of State and Government of the States members of the Economic Community of Central African States (ECCAS) and the Republic of Rwanda, and States members of the United Nations Standing Advisory Committee on Security Questions in Central Africa ("the Committee");

* Adopted on 30 April 2010 by the thirtieth ministerial meeting of the Committee of the United Nations Regional Centre for Peace and Disarmament in Africa (UNREC) held 26 to 30 April 2010 in Kinshasa.

Recalling the principles of the Charter of the United Nations, especially those concerning disarmament and arms control and those inherent in the right of States of individual or collective self-defence, non-intervention and non-interference in the internal affairs of another State, and prohibition of the use or threat to use force;

Taking into account the importance of the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime; the United Nations Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects; the International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons; and the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials;

Reaffirming the importance of United Nations Security Council resolution 1325 (2000) and subsequent resolutions 1820 (2008), 1888 (2009) and 1889 (2009) on women, peace and security;

Taking into account the importance of the United Nations Convention on the Elimination of All Forms of Discrimination against Women, and also the Windhoek Declaration and the Namibia Plan of Action on Mainstreaming a Gender Perspective in Multidimensional Peace Support Operations;

Reaffirming also the importance of Security Council resolution 1612 (2005) and subsequent resolutions on children and armed conflict and condemning the recruitment of children in armed forces and their participation in armed conflicts;

Recalling also the relevant provisions of the Constitutive Act of the African Union and the Bamako Declaration on an African Common Position on the Illicit Proliferation, Circulation and Trafficking of Small Arms and Light Weapons;

Aware of the harmful effects on development of the chaotic proliferation and uncontrolled circulation of small arms and light weapons, and the fact that poverty and the lack of prospects for a better future create conditions conducive to the misuse of such arms, especially by youth;

Taking account also of the actions taken under the Brazzaville Programme of Priority Activities for the implementation in Central Africa of the United Nations Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects;

Taking account also of the importance of instruments for the implementation of confidence-building measures among Central African States, such as the Non Aggression Pact, the Mutual Assistance Pact and the Protocol relating to the Council for Peace and Security in Central Africa (COPAX).

Considering that the illicit trade and trafficking in small arms and light weapons poses a threat to the stability of States and to the security of their populations by, inter alia, promoting armed violence, prolonging armed conflict and encouraging the illicit exploitation of natural resources;

Mindful of the need to ensure that peace and security remain one of the major goals of relations among Central African States;

Taking into account the porous nature of borders between our States and how difficult it is for States to stop the illicit trade and trafficking in small arms and light weapons, their ammunition and all parts and components that can be used for their manufacture, repair and assembly;

Recalling that bladed weapons are tools that can be used for violent and criminal purposes;

Anxious to fight the phenomenon of roadblockers, cross-border insecurity and organized crime;

Recognizing the important contribution of civil society organizations in the fight against the illicit trade and trafficking in small arms and light weapons;

Taking into account that certain members of the Committee have signed the Protocol on the Control of Firearms, Ammunition and Other Related Materials in the Southern African Development Community Region and the Nairobi Protocol for the Prevention, Control and Reduction of Small Arms and Light Weapons in the Great Lakes Region and the Horn of Africa, and considering that this Convention is fully consistent with the efforts being made by the Central African States to combat illicit weapons at the subregional, continental and global level;

Bearing in mind the adoption on 18 May 2007, of the Sao Tome Initiative whereby the States that are members of the Committee decided, inter alia, to draw up a legal instrument on the control of small arms and light weapons in Central Africa;

Have agreed as follows:

Chapter I. Purpose and definitions

Article 1. Purpose

The purpose of this Convention is to:

1. Prevent, combat and eradicate, in Central Africa, the illicit trade and trafficking in small arms and light weapons, their ammunition and all parts and components that can be used for their manufacture, repair and assembly;

2. Strengthen the control, in Central Africa, of the manufacture, trade, movement, transfer, possession and use of small arms and light weapons, their ammunition and all parts and components that can be used for their manufacture, repair and assembly;

3. Combat armed violence and ease the human suffering caused in Central Africa by the illicit trade and trafficking in small arms and light weapons, their ammunition and all parts and components that can be used for their manufacture, repair and assembly;

4. Foster cooperation and confidence among States Parties and cooperation and dialogue among Governments and civil society organizations.

Article 2. Definitions

For the purposes of this Convention:

(*a*) Small arms and light weapons: any man-portable lethal weapon that expels or launches, is designed to expel or launch, or may be readily converted to expel or launch a shot, bullet or projectile by the action of an explosive, excluding antique small arms and

light weapons or their replicas. Antique small arms and light weapons and their replicas shall be defined in accordance with domestic law. In no case shall antique small arms and light weapons include those manufactured after 1899;

(*b*) Small arms: broadly speaking, weapons designed for individual use. They include, inter alia, revolvers and self-loading pistols, rifles and carbines, sub machine guns, assault rifles and light machine guns;

(*c*) Light weapons: broadly speaking, weapons designed for use by two or three persons serving as a crew, although some may be carried and used by a single person. They include, inter alia, heavy machine guns; hand-held under-barrel and mounted grenade launchers; portable anti-aircraft guns; portable anti-tank guns; recoilless rifles; portable launchers of anti-tank missile and rocket systems; portable launchers of anti-aircraft missile systems; and mortars of a calibre of less than 100 millimetres;

(*d*) Ammunition: the complete round or its components, including cartridge cases, primers, propellant powder, bullets or projectiles, that are used in a firearm, provided that those components are themselves subject to authorization in the respective State Party;

(*e*) Transfer: the import, export, transit, trans-shipment and transport or other movement to, across and from the territory of one State Party of small arms and light weapons, their ammunition and all parts and components that can be used for their manufacture, repair and assembly;

(*f*) Illicit: anything done in violation of the provisions of this Convention;

(*g*) Illicit manufacturing: manufacturing or assembly of small arms and light weapons, their parts and components or their ammunition:

- from parts and components illicitly trafficked;
- without a licence or authorization from a competent authority of the State Party where the manufacture or assembly takes place;
- without marking the small arms and light weapons at the time of manufacture, in accordance with this Convention;

(*h*) Illicit trafficking: the import, export, acquisition, sale, delivery, movement or transfer of small arms and light weapons, their ammunition and parts and components that can be used for their manufacture, repair and assembly from across the territory of one State Party to that of another State Party if any one of the States Parties concerned does not authorize it in accordance with the terms of this Convention or if the weapons and ammunition are not marked in accordance with this Convention;

(*i*) Parts and components: that can be used for the manufacture, repair and assembly of small arms and light weapons and their ammunition (9): any element or replacement element specifically designed for small arms or light weapons and essential to their operation, including a barrel, frame or receiver, slide or cylinder, bolt or breechblock, and any device designed or adapted to diminish the sound caused by firing a such a weapon, and any chemical substance serving as an active material and used as a propellant or explosive agent;

(*j*) Tracing: the systematic tracking of illicit small arms and light weapons, their ammunition and parts and components that can be used for their manufacture, repair or

assembly, found or seized in the territory of a State from the point of manufacture or the point of importation through the lines of supply to the point at which they became illicit;

(*k*) Broker: any person or entity acting as an intermediary that brings together relevant parties and arranges or facilitates a potential transaction of small arms and light weapons in return for some form of benefit, whether financial or otherwise;

(*l*) Brokering activities: can take place in the broker's country of nationality, residence or registration; they can also take place in another country. The small arms and light weapons do not necessarily pass through the territory of the country where the brokering activity takes place, nor does the broker necessarily take ownership of them;

(*m*) Activities closely associated with brokering: activities that do not necessarily, in themselves, constitute brokering may be undertaken by brokers as part of the process of putting a deal together to gain a benefit. These may include, for example, acting as dealers or agents in small arms and light weapons, providing for technical assistance, training, transport, freight forwarding, storage, finance, insurance, maintenance, security and other services;

(*n*) Non-State armed group: a group that could potentially use weapons as part of its use of force in order to achieve political, ideological or economic goals, but which is not part of the formal military establishment of a State, alliance of States or intergovernmental organization and over which the State in which it operates has no control;

(*o*) Civil society organization: any non-State, not-for-profit, voluntary, non political organization that is registered with the competent authorities and that has an official structure and acts within the social sphere;

(*p*) Marking: mark on a weapon or ammunition that makes it easy to identify in accordance with this Convention;

(*q*) Central Africa: the geographical area covering the 11 States that are members of the United Nations Standing Advisory Committee on Security Questions in Central Africa, namely, the Republic of Angola, the Republic of Burundi, the Republic of Cameroon, the Central African Republic, the Republic of Chad, the Republic of the Congo, the Democratic Republic of the Congo, the Republic of Equatorial Guinea, the Gabonese Republic, the Republic of Rwanda and the Democratic Republic of Sao Tome and Principe;

(*r*) End-user certificate: document used to identify, monitor and certify the end-user and the intended end use before the competent authorities issue an import or export licence;

(*s*) Visitor's certificate: a document giving a visitor temporary authorization for the duration of their stay in a State Party to this Convention, to bring their weapons into or through the country and to use them, as appropriate, for purposes specified by the competent national authorities;

(*t*) Destruction: process whereby a weapon, ammunition or explosive is rendered permanently inert so that it can no longer operate as it was designed to operate;

(*u*) National stockpile: all the small arms and light weapons, their ammunition and all parts and components that can be used for the their manufacture, repair and assembly held by a country, including those in the possession of the armed forces, security forces and manufacturing firms working for the State;

(*v*) Management of the national stockpile: procedures and activities to ensure safe and secure storage, transport, handling, accounting and recording of small arms and light weapons, their ammunition and all parts and components that can be used for the manufacture, repair amid assembly of such weapons.

Chapter II. Transfers

Article 3. Authorization of transfers to States

1. States Parties shall authorize the transfer of small arms and light weapons, their ammunition and all parts and components that can be used for their manufacture, repair and assembly to, through and from other States.

2. The only grounds for authorizing the transfers are that they are necessary in order to:

(*a*) Maintain law and order, or for defence or national security purposes;

(*b*) Participate in peacekeeping operations conducted under the aegis of the United Nations, the African Union, the Economic Community of Central African States or other regional or subregional organizations of which the State Party concerned is a member.

Article 4. Prohibition of transfers to non-State armed groups

States Parties shall prohibit any transfer of small arms and light weapons, their ammunition and all parts and components that can be used for their manufacture, repair and assembly to, through and from their respective territories to non-State armed groups.

Article 5. Procedure and conditions for the issuance of transfer authorizations

1. States Parties shall set up, and maintain at the national level, a system for authorizing the transfer of small arms and light weapons, their ammunition and all parts and components that can be used for their manufacture, repair and assembly to, through and from their respective territories.

2. States Parties shall each designate a national body to be responsible for handling issues relating to the issuance of transfer authorizations both to public institutions and to qualified private actors, in accordance with the national laws and regulations in force.

3. States Parties shall require that any request for a transfer authorization from a public institution or a private individual be addressed by the applicant to the competent national body and that it contain, at the very least, the following information:

(*a*) Quantity, nature and type of weapon, including all the information concerning markings, in accordance with this Convention;

(*b*) Name, address and contact details of the supplier and his representative;

(*c*) Name, address and contact details of the companies and individuals involved in the transaction, including brokers;

(*d*) Number and time frame of shipments, routes, transit locations, type of transport used, companies involved in importing, forwarding agents and relevant information about storage conditions;

(*e*) End-user certificate;

(*f*) Description of the end use of the small arms and light weapons, ammunition and all parts and components that can be used for their manufacture, repair and assembly;

(*g*) Designation of where they are to be loaded and unloaded.

4. When issuing a transfer authorization States Parties shall include, at the very least, the following information:

(*a*) Place and date of authorization;

(*b*) Date the authorization expires;

(*c*) Exporting, importing, trans-shipment or transit country;

(*d*) Name and full and up-to-date details of end-user and broker;

(*e*) Quantity, nature and type of weapons concerned;

(*f*) Name and full and up-to-date details of the end-user and signature of applicant;

(*g*) Practical means of transport, complete details regarding the carrier and time frame for transport;

(*h*) Name and full and up-to-date details and signature of the authority issuing the authorization.

5. Notwithstanding the provisions of article 3 and the national laws and regulations in force the States Parties agree that a transfer authorization shall be denied by the competent national body if:

(*a*) There is a possibility that the small arms and light weapons, their ammunition and all parts and components that can be used for their manufacture, repair and assembly might be diverted, in the importing or transit State, to unauthorized use or users or to illicit trade, or even re-exported;

(*b*) The small arms and light weapons, their ammunition and all parts and components that can be used for their manufacture, repair and assembly are to be or might be used to commit violations of international human rights law or international humanitarian law; to commit war crimes, genocide or crimes against humanity; or for terrorist purposes;

(*c*) The transfer of the small arms and light weapons, their ammunition and all parts and components that can be used for their manufacture, repair and assembly might violate an international arms embargo;

(*d*) The applicant has, on the occasion of a prior transfer, violated the letter and spirit of national texts in force that regulate transfers and the provisions of this Convention;

6. The States Parties shall take the necessary steps to harmonize, at the subregional level, administrative procedures and supporting documents for authorizations for the transfer of small arms and light weapons, their ammunition and all parts and components that can be used for their manufacture, repair and assembly.

Article 6. End-user certificate

1. The States Parties shall draw up an end-user certificate and the administrative procedures and supporting documents needed for such certificates. A certificate shall

be issued for each import shipment and shall be contingent upon the applicant's having obtained an import authorization issued by the competent authorities.

2. The States Parties shall harmonize the contents of the end-user certificates at the subregional level.

Chapter III. Possession by civilians

Article 7. Prohibition of the possession of small arms by civilians

1. The States Parties shall enact provisions, in accordance with the laws and regulations in force, to prohibit the possession, carrying, use and trade of small arms by civilians within their respective territories.

2. The States Parties shall enact national laws and regulations to penalize the possession of small arms by civilians.

Article 8. Authorization of the possession of light weapons by civilians

1. The States Parties shall determine, in accordance with the laws and regulations in force, the conditions for authorization of the possession, carrying, use and trade by civilians of light weapons, except for those manufactured to military specifications, such as sub-machine guns, assault rifles and light machine guns.

2. The States Parties shall define the administrative procedures governing requests for and issuance of licences for the possession, carrying, use and trade of light weapons by civilians. A licence shall be issued for each light weapon in the possession of a civilian.

3. The States Parties shall issue licences only to civilians who meet, at a minimum, the following conditions:

(*a*) Are of legal age, as defined by the national legislation;

(*b*) Have no criminal record and have undergone a good conduct investigation;

(*c*) Are not involved in any criminal proceedings and do not belong to a gang or a group of bandits;

(*d*) Provide a valid reason for the need to possess, carry, use and trade in light weapons;

(*e*) Prove that they are familiar with the laws governing light weapons;

(*f*) Provide proof that the light weapon will be stored in a safe place and separately from its ammunition;

(*g*) Have no record of domestic violence or any psychiatric history;

(*h*) Provide a complete and up-to-date physical address.

4. The States Parties shall impose a limit on the number of light weapons that may be possessed by the same individual.

5. The States Parties shall establish a minimum period of 30 days and any additional time they deem appropriate before a licence is issued in order to enable the competent authorities to do all the necessary checking.

6. Licences granted to civilians for the possession of light weapons must include an expiration date not to exceed five years. At the expiration of each licence, requests for

renewal shall be subject to a complete review of the conditions cited in paragraph 3 of this article.

7. Persons wishing to turn in their weapons must voluntarily deposit them, against receipt, either at the powder magazine of the competent administration or at the police station or gendarmerie nearest to their domicile. Weapons thus turned in voluntarily shall become the property of the State and shall be transferred, if necessary, to the powder magazine for their destruction.

8. The States Parties shall enact laws and regulations for the strict prohibition of the carrying of light weapons by civilians in public places.

Article 9. Measures for control of the possession of light weapons by civilians

1. The States Parties shall determine by law or by regulation the national administrative procedures and measures for the granting or withdrawal of licences for the possession of light weapons.

2. The States Parties shall revise, update and harmonize national administrative procedures and measures for the granting and withdrawal of authorizations for the possession of light weapons.

3. The States Parties shall establish norms and standards for the proper management of stocks of weapons and ammunition possessed by civilians, particularly manufacturers and dealers.

4. The States Parties shall define by law or regulation the penalties, including civil and criminal penalties, for violations with respect to the possession of light weapons by civilians.

5. The States Parties shall keep a register of owners and dealers of light weapons in their respective territories and shall maintain an electronic database pertaining thereto.

6. The States Parties shall set up a subregional common system for verification of the validity of licences granted at the national level for the possession of, carrying, use and trade in light weapons by civilians. They shall establish for that purpose an electronic database of licences accessible to the competent services of each of the States Parties.

Article 10. Visitor's certificate

1. The States Parties shall require that civilians without authorization for the possession of light weapons valid in the State in question who wish to import or ship in transit, through their respective territories light weapons and their ammunition in their possession must obtain a visitor's certificate authorizing temporary import for the length of their stay or temporary transit.

2. The States Parties shall designate the competent national body responsible for dealing with matters connected with the issuance of visitors' certificates.

3. The States Parties stipulate that the visitors' certificates must include, as a minimum, all the following information: number of weapons, proof of ownership of the weapons, as well as their technical specifications, including the marking components, in order to establish their legality under national laws and the provisions of this Convention.

4. The States Parties shall set the maximum number of light weapons eligible for a visitor's certificate and the maximum duration of temporary import. They shall determine the duration of validity and number of certificates that may be granted to each visitor per year.

5. Every weapon in the possession of a visitor must have its own certificate. All weapons must be marked in accordance with the provisions of this Convention.

6. The States Parties undertake to harmonize the procedures for obtaining visitors' certificates and to prepare and publish an annual report on the visitors' certificates issued and denied.

Chapter IV. Manufacture, distribution and repair

Article 11. Authorization for manufacture, distribution and repair

1. The industrial manufacture and home production of small arms and light weapons, their ammunition and all parts and components that can be used for their manufacture, repair and assembly shall be subject to the granting of a licence and to strict control by the States Parties in the territories in which these activities are carried out.

2. The States Parties shall define by law or regulation the rules and procedures governing the industrial manufacture and home production as well as the distribution of small arms and light weapons, their ammunition and all parts and components that can be used for their manufacture, repair and assembly. They undertake to adopt policies and strategies for the reduction and/or limitation of the local manufacture of small arms and light weapons and their ammunition.

3. The States Parties stipulate that activities with respect to the manufacture, distribution and repair of small arms and light weapons, their ammunition and all parts and components that can be used for their manufacture, repair and assembly which are carried out without a licence are illicit and make their authors liable to penalties, including criminal penalties.

4. The States Parties undertake to define in their respective national legislation the conditions for granting a licence for the manufacture, distribution and repair of small arms and light weapons for legal entities.

5. The States Parties shall issue licences for manufacture, distribution and repair only to individuals who meet, at a minimum, the following conditions:

(*a*) Are of legal age, as defined by the national legislation in force;

(*b*) Have no criminal record and have undergone a good conduct investigation;

(*c*) Prove that they are familiar with the laws governing small arms and light weapons;

(*d*) Provide proof that the weapons and ammunition have been manufactured, distributed or repaired in conformity with the appropriate safety and security norms and procedures established by the laws and regulations in force;

(*e*) Have no history of domestic violence, no psychiatric history and no conviction for a crime using a small arm or a light weapon or violation of the legal provisions relating to the carrying of light weapons by civilians.

6. The States Parties shall ensure that licences are issued for a specific period not to exceed five years, after which every licence-holder must submit a request for renewal to the competent national authorities.

Article 12. Measures for the control of manufacture, distribution, repair and enforcement

1. The States Parties stipulate that manufacturers, distributors and repairers shall provide the competent authorities with information concerning compliance with the rules and procedures in force with respect to the registration, storage and management of weapons and ammunition.

2. The States Parties stipulate that each small arm and light weapon, as well as all ammunition, must be marked at the time of manufacture, in accordance with the provisions of this Convention.

3. The States Parties shall establish norms and standards for the proper management of stocks of weapons and ammunition which have been manufactured and distributed so as to ensure their safety and security, and shall monitor compliance by authorized manufacturers, distributors and repairers.

4. The States Parties undertake to monitor and inspect manufacturers, distributors and repairers so as to ensure compliance with the laws and regulations in force.

5. The States Parties shall exercise the appropriate enforcement powers under their national laws, as well as their international obligations, in order to ensure that those who do not abide by the laws and regulations governing the activities of manufacturers, distributors and repairers of small arms and light weapons and their ammunition are subject to penalties, including the revocation of their licences and/or the confiscation of stocks.

6. The States Parties shall ensure that every entity holding a licence for manufacture, distribution or repair maintains an electronic database and a register in paper form to enable the competent authorities to monitor its activities.

Chapter V. Operational procedures

Article 13. Brokering

1. The States Parties shall register private individuals and companies established or operating in their respective national territories as brokers of small arms and light weapons, their ammunition and all parts and components that can be used for their manufacture, repair and assembly, regardless of their nationality.

2. The States Parties also stipulate that brokers are required to register in their country of origin and in their country of residence.

3. The States Parties undertake to enact laws and regulations limiting the maximum number of weapons brokers or brokering companies established or operating in their respective territories.

4. Without prejudice to the provisions of paragraph 1 of this article, financial and shipping agents of small arms and light weapons, their ammunition and all parts and components that can be used for their manufacture, repair and assembly, which are estab-

lished and operating within or outside the territory of each State Party shall also be subject to registration.

5. The States Parties stipulate that financial and shipping agents of small arms and light weapons, their ammunition and all parts and components that can be used for their manufacture, repair and assembly must make financial transactions for the relevant operations through bank accounts that are traceable by the competent national authorities.

6. Brokers, including financial and shipping agents, who do not register with the competent national authorities, shall be considered illegal.

7. The States Parties shall require that all brokers, including financial and shipping agents duly registered with the competent national authorities, shall obtain a license in their country of origin or in their country of residence for each individual transaction in which they are involved, regardless of where the arrangements concerning the transaction are to be made.

8. The States Parties shall adopt legislative and regulatory measures to punish and establish as a criminal offence the illicit brokering of small arms and light weapons, their ammunition and all parts and components that can be used for their manufacture, repair and assembly.

Article 14. Marking and tracing

1. The States Parties shall enact the necessary legislative and regulatory provisions to ensure that all small arms and light weapons, their ammunition and all parts and components that can be used for their manufacture, repair and assembly that are found in their respective territories bear a unique and specific marking applied upon manufacture or import.

2. All small arms and light weapons and all ammunition which is not marked in accordance with this Convention shall be considered illicit. Unless marked for use under the conditions defined by national laws and regulations and this Convention, such weapons and ammunition must be duly recorded and destroyed.

3. Marking shall be in alphanumeric script and must be legible. It shall be applied to as many parts of weapons as possible, but must appear on the barrel, the frame and especially, the breachblock.

4. Marking on ammunition must appear first of all on the case containing the powder or liquid used in the ammunition or the explosive.

5. The marking of weapons under this Convention shall include, at a minimum, the following elements:

(*a*) The unique serial number of the weapon;

(*b*) Identification of the manufacturer;

(*c*) Identification of the country of manufacture;

(*d*) Identification of the year of manufacture;

(*e*) Calibre;

(*f*) The ministerial department or State body under whose responsibility the weapon falls.

6. Importing countries must mark weapons and provide the year of import.

7. Without prejudice to the provisions of paragraph 2 of this article, and in order to increase the effectiveness of the marking and tracing of manufactured and/or imported weapons, a security marking shall also be applied. It shall be made on parts which are hard to access after manufacture so as to enable identification of the weapon in the event that the classic marking is obliterated or falsified.

8. The security marking shall include the elements described in paragraph 5 of this article.

9. For ammunition, the marking shall include:

(*a*) A unique batch number;

(*b*) Identification of the manufacturer;

(*c*) Identification of the country and year of manufacture;

(*d*) Identification of the purchaser, the ammunition and the country of destination if this information is known at the time of manufacture.

10. The States Parties shall adopt a tracing procedure and may submit a tracing request to the Secretary-General of ECCAS, to any other organization to which they belong, or to another State, in respect of small arms and light weapons, their ammunition and all parts and components that can be used for their manufacture, repair and assembly found within their respective territorial jurisdictions and deemed illicit.

11. The States Parties shall ensure that the national Interpol offices are fully operational, and are able to request assistance from the headquarters of Interpol in the tracing of small arms and light weapons, their ammunition and all parts and components that can be used for their manufacture, repair and assembly.

Article 15. Registration, collection and destruction

1. The States Parties shall conduct semi-annual inspections to evaluate and inventory stockpiles and the conditions under which small arms and light weapons, their ammunition and all parts and components that can be used for their manufacture, repair and assembly in the possession of the armed and security forces and other authorized bodies are stored.

2. The States Parties shall collect, seize and register small arms and light weapons, their ammunition and all parts and components that can be used for their manufacture, repair and assembly that are surplus, obsolete or illicit.

3. The States Parties shall systematically destroy small arms and light weapons, their ammunition and all parts and components that can be used for their manufacture, repair and assembly that are surplus, obsolete or illicit and shall transmit the relevant information to the subregional database established by the Secretary-General of ECCAS.

4. The States Parties shall keep information concerning the destruction of small arms and light weapons, their ammunition and all parts and components that can be used for their manufacture, repair and assembly that are surplus, obsolete or illicit, in national electronic databases for a minimum of 30 years.

5. The States Parties shall adopt the most effective techniques for destruction, in accordance with the international norms in force.

6. The States Parties shall conduct joint operations to locate, seize and destroy illicit caches of small arms and light weapons, their ammunition and all parts and components that can be used for their manufacture, repair and assembly.

Article 16. Management and security of stockpiles

1. The States Parties shall maintain the security of depots and ensure the proper management of stockpiles of small arms and light weapons, their ammunition and all parts and components that can be used for their manufacture, repair and assembly at all times. For that purpose, they shall define and harmonize the necessary administrative measures and procedures for stockpile management, security and storage.

2. The administrative measures and procedures referred to in paragraph 1 of this article shall take into account, inter alia, determination of appropriate storage sites, establishment of physical security measures, definition of procedures for inventory management and recordkeeping, staff training and the identification of measures to ensure security during manufacture and transport.

3. The States Parties shall establish national inventories of small arms and light weapons, their ammunition and all parts and components that can be used for their manufacture, repair and assembly that are in the possession of the armed and security forces and any other competent State body.

4. The States Parties shall adopt the necessary administrative measures and procedures to strengthen the capacity to manage and secure stores of small arms and light weapons, their ammunition and all parts and components that can be used for their manufacture, repair and assembly belonging to the armed and security forces and any other competent State body.

Article 17. Border control

1. The States Parties undertake to adopt appropriate legislative and regulatory measures to strengthen border control in order to put an end in Central Africa to the illicit traffic in small arms and light weapons, their ammunition and all parts and components that can be used for their manufacture, repair and assembly.

2. The States Parties shall establish fully operational customs administrations which shall cooperate with the international customs organization and Interpol, including in requesting their assistance to ensure effective control of small arms and light weapons and their ammunition at border entry points.

3. The States Parties agree to submit small arms and light weapons, their ammunition and all parts and components that can be used for their manufacture, repair and assembly to the border controls and taxation in force at the national level.

4. The States Parties undertake to develop and strengthen their cooperation at borders and specifically to organize joint and mixed transborder operations and patrols so as better to control the circulation of small arms and light weapons, their ammunition and all parts and components that can be used for their manufacture, repair and assembly.

5. The States Parties undertake to strengthen border controls by inter alia setting up mobile border posts equipped with non-intrusive technical facilities and by establishing

a mechanism for cooperation and a system for the exchange of information among the border countries, in accordance with the provisions of this Convention.

Article 18. Points of entry of small arms and light weapons

1. Without prejudice to their other border control measures, the States Parties shall determine and secure in their respective territories the mode of transport for export and import, as well as a precise and limited number of points of entry for small arms and light weapons, their ammunition and all parts and components that can be used for their manufacture, repair and assembly.

2. The States Parties shall determine the order of precedence of the competent services over border controls with respect to small arms and light weapons, their ammunition and all parts and components that can be used for their manufacture, repair and assembly.

3. The States Parties shall designate other competent bodies which may support the customs services in controlling small arms and light weapons and their ammunition at the border entry points.

4. The States Parties stipulate that small arms and light weapons, their ammunition and all parts and components that can be used for their manufacture, repair and assembly that do not pass through the official entry points are illicit.

5. The States Parties shall take the measures necessary for regular controls at official entry points, as determined by the competent authorities, over all of their respective territories.

Article 19. Education and awareness programmes

1. The States Parties undertake to develop public and community education and awareness programmes at the local, national and regional levels to promote greater public and community involvement and to support the efforts to combat illicit trade and trafficking in small arms and light weapons, their ammunition and all parts and components that can be used for their manufacture, repair and assembly.

2. The education and awareness programmes shall aim to promote a culture of peace and involve all sectors of society, including civil society organizations.

Chapter VI. Transparency and exchange of information

Article 20. National electronic database

1. The States Parties shall establish and maintain, at the national level, a centralized electronic database on small arms and light weapons, their ammunition and all parts and components that can be used for their manufacture, repair and assembly.

2. The data shall be kept in the national databases for a minimum of 30 years, including marking procedures and all other relevant and related data.

3. All the data in the national electronic databases must also be kept by each State Party in paper form in a centralized national register.

4. The following information shall be registered in the database:

(*a*) Type or model, calibre and quantity of small arms and light weapons, their ammunition and all parts and components that can be used for their manufacture, repair and assembly, found in the national territory of each State Party, including those manufactured locally;

(*b*) The content of the marking as indicated in the present Convention;

(*c*) The names and addresses of the former and current owners of small arms and light weapons, their ammunition and all parts and components that can be used for their manufacture, repair and assembly and, if applicable, subsequent owners;

(*d*) The date of registration of small arms and light weapons, their ammunition and all parts and components that can be used for their manufacture, repair and assembly;

(*e*) The name and address of the shipper, any intermediary, the consignee and the user indicated on the end-user certificate;

(*f*) The origin, points of departure, transit, if applicable, entry and destination, as well as the customs notations and the dates of departure, transit and delivery to the end-user;

(*g*) Full details concerning export, transit and import licences (quantities and batches corresponding to the same licence as well as the validity of the licence);

(*h*) Full details concerning method(s) of shipment and shipper(s); the monitoring agency or agencies (on departure, at the point of transit if applicable and on arrival);

(*i*) Description of the nature of the transaction (commercial or non commercial, private or public, conversion, repair); and, where applicable, complete information concerning the insurer and/or the financial institution involved in the operation;

(*j*) Information concerning civilian owners of light weapons, in particular: name, address, marking of the weapon, licences;

(*k*) The name and complete and up-to-date addresses of every home producer or industrial manufacturer, every distributor and every repairer of small arms and light weapons, their ammunition and all parts and components that can be used for their manufacture, repair and assembly.

Article 21. Subregional electronic database

1. The States Parties stipulate that the Secretary-General of ECCAS shall establish and maintain as a means of promoting and strengthening confidence, a subregional electronic database of transfers of small arms and light weapons, their ammunition and all parts and components that can be used for their manufacture, repair and assembly.

2. The information shall be kept in the subregional database for a minimum of 30 years, including marking procedures and all other relevant and related data.

3. The Secretary-General of ECCAS, in conjunction with the States Parties, shall determine the modalities for the establishment and management of the subregional database, including all the areas to be covered.

4. The States Parties shall periodically provide the Secretary-General of ECCAS with information to be included in the subregional electronic database, including information relating to marking procedures and all other relevant and related data.

5. The States Parties shall submit to the Secretary-General of ECCA.S an annual report on the management and operation of their respective national databases.

6. The Secretary-General of ECCAS shall prepare for the States Parties an annual report regarding the management and operation of the subregional database.

7. All the data in the subregional database must also be kept by the Secretary-General of ECCAS in a subregional register in paper form.

Article 22. Subregional electronic database of weapons used in peacekeeping operations

1. The States Parties stipulate that the Secretary-General of ECCAS shall establish and maintain, in order to ensure control of their movement, a subregional electronic database of small arms and light weapons, their ammunition and all parts and components that can be used for their manufacture, repair and assembly intended for use in peacekeeping operations.

2. The States Parties stipulate that the data, including data relating to weapons and ammunition collected during disarmament, demobilization and reintegration operations, shall be kept in the subregional database of weapons used in peacekeeping operations for a minimum of 30 years.

3. The States Parties stipulate that the Secretary-General of ECCAS, in conjunction with the States Parties, shall determine the modalities for the establishment and management of the subregional database of weapons used in peacekeeping operations, including all the areas to be covered.

4. The States Parties shall provide the Secretary-General of ECCAS with all the information to be included in the database of weapons used in peacekeeping operations, including information relating to marking procedures and all other relevant and related data.

5. All the data in the subregional database of weapons used in peacekeeping operations must also be kept by each State Party in a national register, in paper form, and by the Secretary-General of ECCAS in a subregional register in paper form.

Article 23. Dialogue with international manufacturers and international organizations

1. The States Parties shall communicate with international producers and suppliers of arms, as well as the competent international and regional organizations, and may also request the Secretary-General of ECCAS for relevant information, including information relating to peacekeeping operations, with a view to the exchange of information and the strengthening of the implementation of this Convention.

2. The Secretary-General of ECCAS shall also take the necessary steps to ensure that international weapons manufacturers support, respect and conform to the spirit and letter of this Convention through, inter alia, the signing of memorandums of understanding and/or framework agreements for cooperation.

Article 24. Confidence-building

1. In order to strengthen confidence, the States Parties shall establish a system of judicial cooperation and shall share and exchange information through the customs, police,

water and forest services, the gendarmerie, the border guards or any other competent State body.

2. The information exchanged may concern criminal groups and networks of illicit trafficking in small arms and light weapons, their ammunition and all parts and components that can be used for their manufacture, repair and assembly.

3. The States Parties shall also exchange information on sources and supply routes, consignee States, means of transport and any financial support available to the groups indicated in paragraph 2 of this article.

4. Each State Party shall inform the others of the convictions of individuals or legal entities involved in manufacture, trade or illicit trafficking decided by its courts. The information shall also cover any seizure and destruction operations.

5. Without prejudice to other actions they might take, the States Parties shall also exchange data relating to:

(*a*) Manufacture (marking system and techniques, authorized manufacturers);

(*b*) Transfers (exports to and/or imports from any other State, transit, available information concerning national legislation, existing practices and controls, authorized dealers and brokers);

(*c*) Existing stockpiles (security, destruction, losses, thefts, illicit seizures).

6. The cooperation mechanism and the system for the exchange of information must make it possible, inter alia, to improve the capacity of the security forces and other intelligence services including through training sessions on investigative procedures and law enforcement techniques in relation to the implementation of this Convention.

7. In order to promote transparency, the States Parties shall prepare an annual national report on requests for transfer authorizations and end-user certificates that have been accepted or denied by the competent national authorities.

8. The annual report of each State Party must include at a minimum, for each transfer authorization that has been denied or accepted, the following information:

(*a*) The type and number of small arms and light weapons, their ammunition and all parts and components that can be used for their manufacture, repair and assembly;

(*b*) The name and complete and up-to-date address of the applicant;

(*c*) The number and reasons for denial or acceptance of the transfer;

(*d*) The measures taken to respect the relevant provisions of this Convention, including the enacting of specific laws.

9. The States Parties shall submit their annual report on transfers to the United Nations Register of Conventional Arms and to the subregional electronic database on small arms and light weapons, their ammunition and all parts and components that can be used for their manufacture, repair and assembly, maintained by ECCAS.

10. The States Parties stipulate that requests for assistance in tracing small arms and light weapons, their ammunition and all parts and components that can be used for their manufacture, repair and assembly, shall contain detailed information, including, inter alia:

(*a*) Information describing the illicit nature of the small arm or light weapon, including the legal justification therefor and the circumstances under which the weapon in question was found;

(*b*) Detailed identification of the weapon, including the markings, type, calibre, serial number, country of import or manufacture and other relevant information;

(*c*) Intended use of the information requested;

(*d*) A specific listing of the information to be provided by the State receiving the tracing request.

11. The State Party receiving the tracing request shall acknowledge receipt of this request within one month and shall duly examine it. It shall respond formally to the request made by the other State within a maximum period of three months from the date of receipt.

12. In responding to a tracing request, the requested State Party shall provide the requesting State with all available and relevant information.

13. The States Parties shall record in their respective national databases and shall exchange information on industrial and home-based manufacturers of small arms and light weapons, their ammunition and all parts and components that can be used for their manufacture, repair and assembly.

Chapter VII. Harmonization of national legislation

Article 25. Adoption and harmonization of legislative provisions

1. The States Parties undertake to revise, update and harmonize their respective national legislation to bring it in line with the relevant provisions of this Convention.

2. The States Parties shall adopt legislative and regulatory measures at the domestic level to penalize the following practices:

(*a*) Illicit trafficking in small arms and light weapons, their ammunition and all parts and components that can be used for their manufacture, repair and assembly;

(*b*) The illicit manufacture of small arms and light weapons, their ammunition and all parts and components that can be used for their manufacture, repair and assembly;

(*c*) The illicit possession and use of small arms and light weapons, their ammunition and all parts and components that can be used for their manufacture, repair and assembly;

(*d*) The falsification or obliteration, illicit removal or alteration of the markings of small arms and light weapons, their ammunition and all parts and components that can be used for their manufacture, repair and assembly, as required by the present Convention;

(*e*) Any other activity carried out in violation of the provisions of this Convention;

(*f*) Any activity carried out in violation of an embargo on small arms and light weapons imposed by the United Nations, the African Union, ECCAS or any other relevant organization.

3. The States Parties stipulate that the Secretary-General of ECCAS shall prepare within a reasonable time, a guide for the harmonization of legislative provisions.

Article 26. Campaign against corruption and other forms of criminality

The States Parties shall adopt appropriate measures to establish or strengthen cooperation between the administrative departments concerned and the security forces in order to prevent and combat corruption, money- laundering, terrorism and drug trafficking associated with the illicit manufacturing of, trafficking in, trade, possession and use of small arms and light weapons, their ammunition and all parts and components that can be used for their manufacture, repair and assembly.

CHAPTER VIII. INSTITUTIONAL ARRANGEMENTS AND IMPLEMENTATION

Article 27. National focal points

Each State Party shall appoint a national focal point on small arms and light weapons who shall also serve as the permanent secretary or chairperson of its national commission. The national focal points shall be the first points of contact for, inter alia, the facilitation of exchanges with the internal and external partners of the States Parties.

Article 28. National commissions

1. Each State Party shall establish a national commission to serve as a coordinating body for the action taken by the State to combat illicit trade and trafficking in small arms and light weapons, their ammunition and all parts and components that can be used for their manufacture, repair and assembly.

2. The national commissions shall be established in accordance with existing international standards.

3. The States Parties undertake, on the basis of their annual budgets, to provide the national commissions with adequate human, material and financial resources in order to ensure that they function effectively and efficiently. They shall create a specific budget line allocated to the national commissions.

4. The States Parties stipulate that the Secretary-General of ECCAS shall support the strengthening of the financial, technical, institutional and operational capacities of the national commissions.

Article 29. The Secretary-General of ECCAS

1. The States Parties stipulate that the Secretary-General of ECCAS shall ensure the follow-up and coordination of all the activities carried out at the subregional level for the purposes of combating illicit trade and trafficking in small arms and light weapons, their ammunition and all parts and components that can be used for their manufacture, repair and assembly.

2. The States Parties shall take the necessary measures to provide the secretariat of ECCAS with institutional and operational capacities commensurate with its responsibilities in the implementation of this Convention.

3. The States Parties stipulate that the tasks of the Secretary-General of ECCAS shall include the responsibility of:

(*a*) Facilitating and encouraging the establishment of a network of civil-society organizations;

(*b*) Mobilizing the necessary resources for the implementation of this Convention;

(*c*) Providing financial and technical support to public authorities and non governmental organizations;

(*d*) Preparing an annual report and ensuring follow-up and appraisal of the implementation of this Convention.

Article 30. National action plans

1. The States Parties undertake to prepare national action plans on small arms and light weapons, which shall be implemented by the national commissions. The national action plans shall be prepared using a data collection process involving all relevant national stakeholders, including civil society organizations, particularly associations of women and youth, who are considered to be the most vulnerable to the dangers posed by small arms and light weapons.

2. The national action plans shall take due account of the findings of studies on the impact of small arms and light weapons on populations and States which the relevant authorities carry out in each State Party.

Article 31. Subregional action plan

1. The Secretary-General of ECCAS shall prepare an action plan describing all the measures and actions to be taken at the subregional level in order to ensure the implementation of this Convention.

2. The subregional action plan must also lay out the strategy to be carried out by the Secretary-General of ECCAS to promote the signing and ratification of this Convention by the States, as well as its entry into force.

Article 32. Financial support

The States Parties undertake to contribute financially towards the implementation of this Convention. They also undertake to support the establishment, by the Secretary-General of ECCAS, of a group of experts responsible for follow-up and appraisal of the implementation of activities.

Article 33. Assistance and cooperation

1. The States Parties undertake to promote cooperation among States and among various competent government bodies in the implementation of this Convention.

2. The States Parties request the Secretary-General of ECCAS to provide them all necessary assistance to enable them to benefit from the multifaceted support of technical and financial partners, particularly as regards capacity-building for the armed and security forces, the border-control services and all other services involved in combating illicit trade and trafficking in small arms and light weapons, their ammunition and all parts and components that can be used for their manufacture, repair and assembly.

Article 34. Follow-up and appraisal

1. The group of experts may seek any information it deems useful to its work in relation to the States Parties and, in particular, from other States Members of the United Nations, the States participating in the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies, the European Union and any arms manufacturer or supplier.

2. Each State Party shall prepare and submit an annual report to the Secretary-General of ECCAS on its activities to implement this Convention.

3. The Secretary-General of the United Nations shall convene a Conference of States Parties to this Convention one year after its entry into force.

4. The first Conference of States Parties shall be responsible for reviewing the implementation of this Convention and may have additional mandates in accordance with decisions taken by the States Parties. The subsequent conferences of States Parties shall be held once every two years, beginning two years from the date of the first conference, in order to review the state of implementation of this Convention.

5. Five years after the entry into force of this Convention, the Secretary-General of the United Nations shall convene a review conference. The Secretary-General shall also convene other review conferences at the request of one or more States Parties.

6. The items to be considered during the review conferences shall be considered and adopted within the framework of the United Nations Standing Advisory Committee on Security Questions in Central Africa. The review conferences shall, at a minimum, consider the state of implementation of this Convention.

Chapter IX. General and final provisions

Article 35. Signature, ratification, acceptance, approval and accession

1. This Convention, adopted in Kinshasa on 30 April 2010, shall be open for signature to all the States members of ECCAS and by the Republic of Rwanda, States members of the United Nations Standing Advisory Committee on Security Questions in Central Africa, at Brazzaville on 19 November 2010, and subsequently at United Nations Headquarters in New York, until its entry into force.

2. Instruments of ratification, acceptance, approval or accession shall be deposited with the Secretary-General of the United Nations.

3. Any other interested State, other than those specified in article 35, paragraph 1, may accede to this Convention, subject to the approval of the Conference of States Parties.

Article 36. Entry into force

1. This Convention shall enter into force 30 days after the date of deposit of the sixth instrument of ratification, acceptance, approval or accession.

2. For each State that deposits its instrument of ratification, acceptance, approval or accession after the date of deposit of the sixth instrument of ratification, acceptance, approval or accession, the Convention shall enter into force 30 days after the date of deposit of that instrument.

Article 37. Amendments

1. Any State Party may propose amendments to this Convention at any time after its entry into force.

2. Any proposed amendment shall be transmitted to the Secretary-General of the United Nations, who shall circulate it to all of the States Parties at least 90 days before the opening of the Conference of States Parties.

3. Amendments shall be adopted by consensus at the Conference of States Parties.

4. For the parties that have accepted amendments, they shall enter into force 30 days after the deposit of the sixth instrument of acceptance of the amendment with the depositary. Subsequently, they shall enter into force for a party 30 days after the deposit of that party's instrument of acceptance of the amendment with the depositary.

Article 38. Reservations

The articles of this Convention shall not be subject to reservations.

Article 39. Denunciation and withdrawal

1. Any State Party, in the exercise of its national sovereignty, shall have the right to withdraw from this Convention.

2. Such withdrawal shall be effected by a State Party by means of written notification, including a statement of the extraordinary events that jeopardized its supreme interests, addressed to the Secretary-General of the United Nations in his or her capacity as depositary, who shall then convey it to the other States Parties.

3. Withdrawal shall not take effect until 12 months after the depositary receives the withdrawal instrument.

4. Withdrawal shall not release the State Party concerned from the obligations imposed on it by the Convention with regard to any violation that occurred before the date when the denunciation took effect, nor shall it hinder in any way the continued consideration of any matter concerning the interpretation or application of this Convention.

Article 40. Depositary and languages

1. The Secretary-General of the United Nations shall be the depositary of this Convention.

2. The original of this Convention, of which the English, French and Spanish texts are equally authentic, shall be deposited with the depositary, who shall have certified official copies sent to all the States.

Article 41. Special provisions

1. The commitments resulting from the provisions of this Convention shall not be interpreted as contradicting the letter or the spirit of conventions or agreements between a State Party and a third State provided that such conventions or agreements do not contradict the letter or spirit of this Convention.

2. In the event of any dispute between two or more States Parties concerning the interpretation or application of this Convention, the States Parties in question shall consult each other with a view to settling the dispute quickly through negotiation or by any other peaceful means of their choosing, including recourse to the good offices of the Secretary-General of ECCAS, the Secretary-General of the United Nations or an extraordinary Conference of States Parties.

In witness whereof, we, the Heads of State and Government of the States members of Economic Community of Central African States and the Republic of Rwanda, States members of the United Nations Standing Advisory Committee on Security Questions in Central Africa

Have signed this Convention in three (3) original copies in the English, Spanish and French languages, all three texts being equally authentic.

Done at Kinshasa on 30 April 2010

The Republic of Angola
The Republic of Burundi
The Republic of Cameroon
The Central African Republic
The Republic of Chad
The Democratic Republic of the Congo
The Republic of the Congo
The Republic of Equatorial Guinea
The Gabonese Republic
The Republic of Rwanda
The Democratic Republic of Sao Tome and Principe

4. Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits arising from their Utilization to the Convention on Biological Diversity. Nagoya, 29 October 2010*

The Parties to this Protocol,

Being Parties to the Convention on Biological Diversity, hereinafter referred to as "the Convention",

Recalling that the fair and equitable sharing of benefits arising from the utilization of genetic resources is one of three core objectives of the Convention, and recognizing that this Protocol pursues the implementation of this objective within the Convention,

Reaffirming the sovereign rights of States over their natural resources and according to the provisions of the Convention,

Recalling further Article 15 of the Convention,

Recognizing the important contribution to sustainable development made by technology transfer and cooperation to build research and innovation capacities for adding value

* Adopted by the Conference of the Parties to the Convention on Biological Diversity at its tenth meeting on 29 October 2010 held in Nagoya, Japan.

to genetic resources in developing countries, in accordance with Articles 16 and 19 of the Convention,

Recognizing that public awareness of the economic value of ecosystems and biodiversity and the fair and equitable sharing of this economic value with the custodians of biodiversity are key incentives for the conservation of biological diversity and the sustainable use of its components,

Acknowledging the potential role of access and benefit-sharing to contribute to the conservation and sustainable use of biological diversity, poverty eradication and environmental sustainability and thereby contributing to achieving the Millennium Development Goals,

Acknowledging the linkage between access to genetic resources and the fair and equitable sharing of benefits arising from the utilization of such resources,

Recognizing the importance of providing legal certainty with respect to access to genetic resources and the fair and equitable sharing of benefits arising from their utilization,

Further recognizing the importance of promoting equity and fairness in negotiation of mutually agreed terms between providers and users of genetic resources,

Recognizing also the vital role that women play in access and benefit- sharing and affirming the need for the full participation of women at all levels of policymaking and implementation for biodiversity conservation,

Determined to further support the effective implementation of the access and benefit-sharing provisions of the Convention,

Recognizing that an innovative solution is required to address the fair and equitable sharing of benefits derived from the utilization of genetic resources and traditional knowledge associated with genetic resources that occur in transboundary situations or for which it is not possible to grant or obtain prior informed consent,

Recognizing the importance of genetic resources to food security, public health, biodiversity conservation, and the mitigation of and adaptation to climate change,

Recognizing the special nature of agricultural biodiversity, its distinctive features and problems needing distinctive solutions,

Recognizing the interdependence of all countries with regard to genetic resources for food and agriculture as well as their special nature and importance for achieving food security worldwide and for sustainable development of agriculture in the context of poverty alleviation and climate change and acknowledging the fundamental role of the International Treaty on Plant Genetic Resources for Food and Agriculture and the FAO Commission on Genetic Resources for Food and Agriculture in this regard,

Mindful of the International Health Regulations (2005) of the World Health Organization and the importance of ensuring access to human pathogens for public health preparedness and response purposes,

Acknowledging ongoing work in other international forums relating to access and benefit-sharing,

Recalling the Multilateral System of Access and Benefit-sharing established under the International Treaty on Plant Genetic Resources for Food and Agriculture developed in harmony with the Convention,

Recognizing that international instruments related to access and benefit- sharing should be mutually supportive with a view to achieving the objectives of the Convention,

Recalling the relevance of Article 8(j) of the Convention as it relates to traditional knowledge associated with genetic resources and the fair and equitable sharing of benefits arising from the utilization of such knowledge,

Noting the interrelationship between genetic resources and traditional knowledge, their inseparable nature for indigenous and local communities, the importance of the traditional knowledge for the conservation of biological diversity and the sustainable use of its components, and for the sustainable livelihoods of these communities,

Recognizing the diversity of circumstances in which traditional knowledge associated with genetic resources is held or owned by indigenous and local communities,

Mindful that it is the right of indigenous and local communities to identify the rightful holders of their traditional knowledge associated with genetic resources, within their communities,

Further recognizing the unique circumstances where traditional knowledge associated with genetic resources is held in countries, which may be oral, documented or in other forms, reflecting a rich cultural heritage relevant for conservation and sustainable use of biological diversity,

Noting the United Nations Declaration on the Rights of Indigenous Peoples, and

Affirming that nothing in this Protocol shall be construed as diminishing or extinguishing the existing rights of indigenous and local communities,

Have agreed as follows:

Article 1. Objective

The objective of this Protocol is the fair and equitable sharing of the benefits arising from the utilization of genetic resources, including by appropriate access to genetic resources and by appropriate transfer of relevant technologies, taking into account all rights over those resources and to technologies, and by appropriate funding, thereby contributing to the conservation of biological diversity and the sustainable use of its components.

Article 2. Use of terms

The terms defined in Article 2 of the Convention shall apply to this Protocol. In addition, for the purposes of this Protocol:

(*a*) "Conference of the Parties" means the Conference of the Parties to the Convention;

(*b*) "Convention" means the Convention on Biological Diversity;

(*c*) "Utilization of genetic resources" means to conduct research and development on the genetic and/or biochemical composition of genetic resources, including through the application of biotechnology as defined in Article 2 of the Convention;

(*d*) "Biotechnology" as defined in Article 2 of the Convention means any technological application that uses biological systems, living organisms, or derivatives thereof, to make or modify products or processes for specific use;

(*e*) "Derivative" means a naturally occurring biochemical compound resulting from the genetic expression or metabolism of biological or genetic resources, even if it does not contain functional units of heredity.

Article 3. Scope

This Protocol shall apply to genetic resources within the scope of Article 15 of the Convention and to the benefits arising from the utilization of such resources. This Protocol shall also apply to traditional knowledge associated with genetic resources within the scope of the Convention and to the benefits arising from the utilization of such knowledge.

Article 4. Relationship with international agreements and instruments

1. The provisions of this Protocol shall not affect the rights and obligations of any Party deriving from any existing international agreement, except where the exercise of those rights and obligations would cause a serious damage or threat to biological diversity. This paragraph is not intended to create a hierarchy between this Protocol and other international instruments.

2. Nothing in this Protocol shall prevent the Parties from developing and implementing other relevant international agreements, including other specialized access and benefit-sharing agreements, provided that they are supportive of and do not run counter to the objectives of the Convention and this Protocol.

3. This Protocol shall be implemented in a mutually supportive manner with other international instruments relevant to this Protocol. Due regard should be paid to useful and relevant ongoing work or practices under such international instruments and relevant international organizations, provided that they are supportive of and do not run counter to the objectives of the Convention and this Protocol.

4. This Protocol is the instrument for the implementation of the access and benefit-sharing provisions of the Convention. Where a specialized international access and benefit-sharing instrument applies that is consistent with, and does not run counter to the objectives of the Convention and this Protocol, this Protocol does not apply for the Party or Parties to the specialized instrument in respect of the specific genetic resource covered by and for the purpose of the specialized instrument.

Article 5. Fair and equitable benefit-sharing

1. In accordance with Article 15, paragraphs 3 and 7 of the Convention, benefits arising from the utilization of genetic resources as well as subsequent applications and commercialization shall be shared in a fair and equitable way with the Party providing such resources that is the country of origin of such resources or a Party that has acquired the genetic resources in accordance with the Convention. Such sharing shall be upon mutually agreed terms.

2. Each Party shall take legislative, administrative or policy measures, as appropriate, with the aim of ensuring that benefits arising from the utilization of genetic resources that are held by indigenous and local communities, in accordance with domestic legislation regarding the established rights of these indigenous and local communities over these

genetic resources, are shared in a fair and equitable way with the communities concerned, based on mutually agreed terms.

3. To implement paragraph 1 above, each Party shall take legislative, administrative or policy measures, as appropriate.

4. Benefits may include monetary and non monetary benefits, including but not limited to those listed in the Annex.

5. Each Party shall take legislative, administrative or policy measures as appropriate, in order that the benefits arising from the utilization of traditional knowledge associated with genetic resources are shared in a fair and equitable way with indigenous and local communities holding such knowledge. Such sharing shall be upon mutually agreed terms.

Article 6. Access to genetic resources

1. In the exercise of sovereign rights over natural resources, and subject to domestic access and benefit-sharing legislation or regulatory requirements, access to genetic resources for their utilization shall be subject to the prior informed consent of the Party providing such resources that is the country of origin of such resources or a Party that has acquired the genetic resources in accordance with the Convention, unless otherwise determined by that Party.

2. In accordance with domestic law, each Party shall take measures, as appropriate, with the aim of ensuring that the prior informed consent or approval and involvement of indigenous and local communities is obtained for access to genetic resources where they have the established right to grant access to such resources.

3. Pursuant to paragraph 1 above, each Party requiring prior informed consent shall take the necessary legislative, administrative or policy measures, as appropriate, to:

(*a*) Provide for legal certainty, clarity and transparency of their domestic access and benefit sharing legislation or regulatory requirements;

(*b*) Provide for fair and non-arbitrary rules and procedures on accessing genetic resources;

(*c*) Provide information on how to apply for prior informed consent;

(*d*) Provide for a clear and transparent written decision by a competent national authority, in a cost-effective manner and within a reasonable period of time;

(*e*) Provide for the issuance at the time of access of a permit or its equivalent as evidence of the decision to grant prior informed consent and of the establishment of mutually agreed terms, and notify the Access and Benefit-sharing Clearing-House accordingly;

(*f*) Where applicable, and subject to domestic legislation, set out criteria and/or processes for obtaining prior informed consent or approval and involvement of indigenous and local communities for access to genetic resources; and

(*g*) Establish clear rules and procedures for requiring and establishing mutually agreed terms. Such terms shall be set out in writing and may include, *inter alia*:

(i) A dispute settlement clause;

(ii) Terms on benefit-sharing, including in relation to intellectual property rights;

(iii) Terms on subsequent third-party use, if any; and

(iv) Terms on changes of intent, where applicable.

Article 7. Access to traditional knowledge associated with genetic resources

In accordance with domestic law, each Party shall take measures, as appropriate, with the aim of ensuring that traditional knowledge associated with genetic resources that is held by indigenous and local communities is accessed with the prior and informed consent or approval and involvement of these indigenous and local communities, and that mutually agreed terms have been established.

Article 8. Special considerations

In the development and implementation of its access and benefit-sharing legislation or regulatory requirements, each Party shall:

(*a*) Create conditions to promote and encourage research which contributes to the conservation and sustainable use of biological diversity, particularly in developing countries, including through simplified measures on access for non-commercial research purposes, taking into account the need to address a change of intent for such research;

(*b*) Pay due regard to cases of present or imminent emergencies that threaten or damage human, animal or plant health, as determined nationally or internationally. Parties may take into consideration the need for expeditious access to genetic resources and expeditious fair and equitable sharing of benefits arising out of the use of such genetic resources, including access to affordable treatments by those in need, especially in developing countries;

(*c*) Consider the importance of genetic resources for food and agriculture and their special role for food security.

Article 9. Contribution to conservation and sustainable use

The Parties shall encourage users and providers to direct benefits arising from the utilization of genetic resources towards the conservation of biological diversity and the sustainable use of its components.

Article 10. Global multilateral benefit-sharing mechanism

Parties shall consider the need for and modalities of a global multilateral benefit-sharing mechanism to address the fair and equitable sharing of benefits derived from the utilization of genetic resources and traditional knowledge associated with genetic resources that occur in transboundary situations or for which it is not possible to grant or obtain prior informed consent. The benefits shared by users of genetic resources and traditional knowledge associated with genetic resources through this mechanism shall be used to support the conservation of biological diversity and the sustainable use of its components globally.

Article 11. Transboundary cooperation

1. In instances where the same genetic resources are found *in situ* within the territory of more than one Party, those Parties shall endeavour to cooperate, as appropriate, with the involvement of indigenous and local communities concerned, where applicable, with a view to implementing this Protocol.

2. Where the same traditional knowledge associated with genetic resources is shared by one or more indigenous and local communities in several Parties, those Parties shall endeavour to cooperate, as appropriate, with the involvement of the indigenous and local communities concerned, with a view to implementing the objective of this Protocol.

Article 12. Traditional knowledge associated with genetic resources

1. In implementing their obligations under this Protocol, Parties shall in accordance with domestic law take into consideration indigenous and local communities' customary laws, community protocols and procedures, as applicable, with respect to traditional knowledge associated with genetic resources.

2. Parties, with the effective participation of the indigenous and local communities concerned, shall establish mechanisms to inform potential users of traditional knowledge associated with genetic resources about their obligations, including measures as made available through the Access and Benefit-sharing Clearing-House for access to and fair and equitable sharing of benefits arising from the utilization of such knowledge.

3. Parties shall endeavour to support, as appropriate, the development by indigenous and local communities, including women within these communities, of:

(*a*) Community protocols in relation to access to traditional knowledge associated with genetic resources and the fair and equitable sharing of benefits arising out of the utilization of such knowledge;

(*b*) Minimum requirements for mutually agreed terms to secure the fair and equitable sharing of benefits arising from the utilization of traditional knowledge associated with genetic resources; and

(*c*) Model contractual clauses for benefit-sharing arising from the utilization of traditional knowledge associated with genetic resources.

4. Parties, in their implementation of this Protocol, shall, as far as possible, not restrict the customary use and exchange of genetic resources and associated traditional knowledge within and amongst indigenous and local communities in accordance with the objectives of the Convention.

Article 13. National focal points and competent national authorities

1. Each Party shall designate a national focal point on access and benefit- sharing. The national focal point shall make information available as follows:

(*a*) For applicants seeking access to genetic resources, information on procedures for obtaining prior informed consent and establishing mutually agreed terms, including benefit-sharing;

(*b*) For applicants seeking access to traditional knowledge associated with genetic resources, where possible, information on procedures for obtaining prior informed con-

sent or approval and involvement, as appropriate, of indigenous and local communities and establishing mutually agreed terms including benefit-sharing; and

(*c*) Information on competent national authorities, relevant indigenous and local communities and relevant stakeholders.

The national focal point shall be responsible for liaison with the Secretariat.

2. Each Party shall designate one or more competent national authorities on access and benefit sharing. Competent national authorities shall, in accordance with applicable national legislative, administrative or policy measures, be responsible for granting access or, as applicable, issuing written evidence that access requirements have been met and be responsible for advising on applicable procedures and requirements for obtaining prior informed consent and entering into mutually agreed terms.

3. A Party may designate a single entity to fulfil the functions of both focal point and competent national authority.

4. Each Party shall, no later than the date of entry into force of this Protocol for it, notify the Secretariat of the contact information of its national focal point and its competent national authority or authorities. Where a Party designates more than one competent national authority, it shall convey to the Secretariat, with its notification thereof relevant information on the respective responsibilities of those authorities. Where applicable, such information shall, at a minimum, specify which competent authority is responsible for the genetic resources sought. Each Party shall forthwith notify the Secretariat of any changes in the designation of its national focal point or in the contact information or responsibilities of its competent national authority or authorities.

5. The Secretariat shall make information received pursuant to paragraph 4 above available through the Access and Benefit-sharing Clearing-House.

Article 14. The Access and Benefit-sharing Clearing-House and information sharing

1. An Access and Benefit-sharing Clearing-House is hereby established as part of the clearing house mechanism under Article 18, paragraph 3, of the Convention. It shall serve as a means for sharing of information related to access and benefit-sharing. In particular, it shall provide access to information made available by each Party relevant to the implementation of this Protocol.

2. Without prejudice to the protection of confidential information, each Party shall make available to the Access and Benefit-sharing Clearing-House any information required by this Protocol, as well as information required pursuant to the decisions taken by the Conference of the Parties serving as the meeting of the Parties to this Protocol. The information shall include:

(*a*) Legislative, administrative and policy measures on access and benefit-sharing;

(*b*) Information on the national focal point and competent national authority or authorities; and

(*c*) Permits or their equivalent issued at the time of access as evidence of the decision to grant prior informed consent and of the establishment of mutually agreed terms.

3. Additional information, if available and as appropriate, may include:

(*a*) Relevant competent authorities of indigenous and local communities, and information as so decided;

(*b*) Model contractual clauses;

(*c*) Methods and tools developed to monitor genetic resources; and

(*d*) Codes of conduct and best practices.

4. The modalities of the operation of the Access and Benefit-sharing Clearing-House, including reports on its activities, shall be considered and decided upon by the Conference of the Parties serving as the meeting of the Parties to this Protocol at its first meeting, and kept under review thereafter.

Article 15. Compliance with domestic legislation or regulatory requirements on access and benefit-sharing

1. Each Party shall take appropriate, effective and proportionate legislative, administrative or policy measures to provide that genetic resources utilized within its jurisdiction have been accessed in accordance with prior informed consent and that mutually agreed terms have been established, as required by the domestic access and benefit-sharing legislation or regulatory requirements of the other Party.

2. Parties shall take appropriate, effective and proportionate measures to address situations of non compliance with measures adopted in accordance with paragraph 1 above.

3. Parties shall, as far as possible and as appropriate, cooperate in cases of alleged violation of domestic access and benefit-sharing legislation or regulatory requirements referred to in paragraph 1 above.

Article 16. Compliance with domestic legislation or regulatory requirements on access and benefit-sharing for traditional knowledge associated with genetic resources

1. Each Party shall take appropriate, effective and proportionate legislative, administrative or policy measures, as appropriate, to provide that traditional knowledge associated with genetic resources utilized within their jurisdiction has been accessed in accordance with prior informed consent or approval and involvement of' indigenous and local communities and that mutually agreed terms have been established, as required by domestic access and benefit sharing legislation or regulatory requirements of the other Party where such indigenous and local communities are located.

2. Each Party shall take appropriate, effective and proportionate measures to address situations of non-compliance with measures adopted in accordance with paragraph 1 above.

3. Parties shall, as far as possible and as appropriate, cooperate in cases of alleged violation of domestic access and benefit-sharing legislation or regulatory requirements referred to in paragraph 1 above.

Article 17. Monitoring the utilization of genetic resources

1. To support compliance, each Party shall take measures, as appropriate, to monitor and to enhance transparency about the utilization of genetic resources. Such measures shall include:

(*a*) The designation of one or more checkpoints, as follows:

(i) Designated checkpoints would collect or receive, as appropriate, relevant information related to prior informed consent, to the source of the genetic resource, to the establishment of mutually agreed terms, and/or to the utilization of genetic resources, as appropriate;

(ii) Each Party shall, as appropriate and depending on the particular characteristics of a designated checkpoint, require users of genetic resources to provide the information specified in the above paragraph at a designated checkpoint. Each Party shall take appropriate, effective and proportionate measures to address situations of non-compliance;

(iii) Such information, including from internationally recognized certificates of compliance where they are available, will, without prejudice to the protection of confidential information, be provided to relevant national authorities, to the Party providing prior informed consent and to the Access and Benefit-sharing Clearing-House, as appropriate;

(iv) Check points must be effective and should have functions relevant to implementation of this subparagraph (a). They should be relevant to the utilization of genetic resources, or to the collection of relevant information at, *inter alia*, any stage of research, development, innovation, pre-commercialization or commercialization.

(*b*) Encouraging users and providers of genetic resources to include provisions in mutually agreed terms to share information on the implementation of such terms, including through reporting requirements; and

(*c*) Encouraging the use of cost-effective communication tools and systems.

2. A permit or its equivalent issued in accordance with Article 6, paragraph 3 (e) and made available to the Access and Benefit-sharing Clearing-House, shall constitute an internationally recognized certificate of compliance.

3. An internationally recognized certificate of compliance shall serve as evidence that the genetic resource which it covers has been accessed in accordance with prior informed consent and that mutually agreed terms have been established, as required by the domestic access and benefit-sharing legislation or regulatory requirements of the Party providing prior informed consent.

4. The internationally recognized certificate of compliance shall contain the following minimum information when it is not confidential:

(*a*) Issuing authority;

(*b*) Date of issuance;

(*c*) The provider;

(*d*) Unique identifier of the certificate;

(*e*) The person or entity to whom prior informed consent was granted;

(*f*) Subject-matter or genetic resources covered by the certificate;

(*g*) Confirmation that mutually agreed terms were established;

(*h*) Confirmation that prior informed consent was obtained; and

(*i*) Commercial and/or non-commercial use.

Article 18. Compliance with mutually agreed terms

1. In the implementation of Article 6, paragraph 3 (g) (i) and Article 7, each Party shall encourage providers and users of genetic resources and/or traditional knowledge associated with genetic resources to include provisions in mutually agreed terms to cover, where appropriate, dispute resolution including:

(*a*) The jurisdiction to which they will subject any dispute resolution processes;

(*b*) The applicable law; and/or

(*c*) Options for alternative dispute resolution, such as mediation or arbitration.

2. Each Party shall ensure that an opportunity to seek recourse is available under their legal systems, consistent with applicable jurisdictional requirements, in cases of disputes arising from mutually agreed terms.

3. Each Party shall take effective measures, as appropriate, regarding:

(*a*) Access to justice; and

(*b*) The utilization of mechanisms regarding mutual recognition and enforcement of foreign judgments and arbitral awards.

4. The effectiveness of this article shall be reviewed by the Conference of the Parties serving as the meeting of the Parties to this Protocol in accordance with Article 31 of this Protocol.

Article 19. Model contractual clauses

1. Each Party shall encourage, as appropriate, the development, update and use of sectoral and cross-sectoral model contractual clauses for mutually agreed terms.

2. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall periodically take stock of the use of sectoral and cross-sectoral model contractual clauses.

Article 20. Codes of conduct, guidelines and best practices and/or standards

1. Each Party shall encourage, as appropriate, the development, update and use of voluntary codes of conduct, guidelines and best practices and/or standards in relation to access and benefit-sharing.

2. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall periodically take stock of the use of voluntary codes of conduct, guidelines and best practices and/or standards and consider the adoption of specific codes of conduct, guidelines and best practices and/or standards.

Article 21. Awareness-raising

Each Party shall take measures to raise awareness of the importance of genetic resources and traditional knowledge associated with genetic resources, and related access and benefit sharing issues. Such measures may include, *inter alia*:

(*a*) Promotion of this Protocol, including its objective;

(*b*) Organization of meetings of indigenous and local communities and relevant stakeholders;

(*c*) Establishment and maintenance of a help desk for indigenous and local communities and relevant stakeholders;

(*d*) Information dissemination through a national clearing-house;

(*e*) Promotion of voluntary codes of conduct, guidelines and best practices and/or standards in consultation with indigenous and local communities and relevant stakeholders;

(*f*) Promotion of, as appropriate, domestic, regional and international exchanges of experience;

(*g*) Education and training of users and providers of genetic resources and traditional knowledge associated with genetic resources about their access and benefit-sharing obligations;

(*h*) Involvement of indigenous and local communities and relevant stakeholders in the implementation of this Protocol; and

(*i*) Awareness-raising of community protocols and procedures of indigenous and local communities.

Article 22. Capacity

1. The Parties shall cooperate in the capacity-building, capacity development and strengthening of human resources and institutional capacities to effectively implement this Protocol in developing country Parties, in particular the least developed countries and small island developing States among them, and Parties with economies in transition, including through existing global, regional, subregional and national institutions and organizations. In this context, Parties should facilitate the involvement of indigenous and local communities and relevant stakeholders, including non-governmental organizations and the private sector.

2. The need of developing country Parties, in particular the least developed countries and small island developing States among them, and Parties with economies in transition for financial resources in accordance with the relevant provisions of the Convention shall be taken fully into account for capacity building and development to implement this Protocol.

3. As a basis for appropriate measures in relation to the implementation of this Protocol, developing country Parties, in particular the least developed countries and small island developing States among them, and Parties with economies in transition should identify their national capacity needs and priorities through national capacity self-assessments. In doing so, such Parties should support the capacity needs and priorities of indigenous and local communities and relevant stakeholders, as identified by them, emphasizing the capacity needs and priorities of women.

4. In support of the implementation of this Protocol, capacity-building and development may address, inter alia, the following key areas:

(*a*) Capacity to implement, and to comply with the obligations of, this Protocol;

(*b*) Capacity to negotiate mutually agreed terms;

(*c*) Capacity to develop, implement and enforce domestic legislative, administrative or policy measures on access and benefit-sharing; and

(*d*) Capacity of countries to develop their endogenous research capabilities to add value to their own genetic resources.

5. Measures in accordance with paragraphs 1 to 4 above may include, *inter alia*:

(*a*) Legal and institutional development;

(*b*) Promotion of equity and fairness in negotiations, such as training to negotiate mutually agreed terms;

(*c*) The monitoring and enforcement of compliance;

(*d*) Employment of best available communication tools and Internet-based systems for access and benefit-sharing activities;

(*e*) Development and use of valuation methods;

(*f*) Bioprospecting, associated research and taxonomic studies;

(*g*) Technology transfer, and infrastructure and technical capacity to make such technology transfer sustainable;

(*h*) Enhancement of the contribution of access and benefit-sharing activities to the conservation of biological diversity and the sustainable use of its components;

(*i*) Special measures to increase the capacity of relevant stakeholders in relation to access and benefit-sharing; and

(*j*) Special measures to increase the capacity of indigenous and local communities with emphasis on enhancing the capacity of women within those communities in relation to access to genetic resources and/or traditional knowledge associated with genetic resources.

6. Information on capacity-building and development initiatives at national, regional and international levels, undertaken in accordance with paragraphs 1 to 5 above, should be provided to the Access and Benefit-sharing Clearing-House with a view to promoting synergy and coordination on capacity-building and development for access and benefit-sharing.

Article 23. Technology transfer, collaboration and cooperation

In accordance with Articles 15, 16, 18 and 19 of the Convention, the Parties shall collaborate and cooperate in technical and scientific research and development programmes, including biotechnological research activities, as a means to achieve the objective of this Protocol. The Parties undertake to promote and encourage access to technology by, and transfer of technology to, developing country Parties, in particular the least developed countries and small island developing States among them, and Parties with economies in transition, in order to enable the development and strengthening of a sound and viable technological and scientific base for the attainment of the objectives of the Convention and this Protocol. Where possible and appropriate such collaborative activities shall take place in and with a Party or the Parties providing genetic resources that is the country or are the countries of origin of such resources or a Party or Parties that have acquired the genetic resources in accordance with the Convention.

Article 24. Non-Parties

The Parties shall encourage non-Parties to adhere to this Protocol and to contribute appropriate information to the Access and Benefit-sharing Clearing-House.

Article 25. Financial mechanism and resources

1. In considering financial resources for the implementation of this Protocol, the Parties shall take into account the provisions of Article 20 of the Convention.

2. The financial mechanism of the Convention shall be the financial mechanism for this Protocol.

3. Regarding the capacity-building and development referred to in Article 22 of this Protocol, the Conference of the Parties serving as the meeting of the Parties to this Protocol, in providing guidance with respect to the financial mechanism referred to in paragraph 2 above, for consideration by the Conference of the Parties, shall take into account the need of developing country Parties, in particular the least developed countries and small island developing States among them, and of Parties with economies in transition, for financial resources, as well as the capacity needs and priorities of indigenous and local communities, including women within these communities.

4. In the context of paragraph 1 above, the Parties shall also take into account the needs of the developing country Parties, in particular the least developed countries and small island developing States among them, and of the Parties with economies in transition, in their efforts to identify and implement their capacity-building and development requirements for the purposes of the implementation of this Protocol.

5. The guidance to the financial mechanism of the Convention in relevant decisions of the Conference of the Parties, including those agreed before the adoption of this Protocol, shall apply, *mutatis mutandis*, to the provisions of this Article.

6. The developed country Parties may also provide, and the developing country Parties and the Parties with economies in transition avail themselves of, financial and other resources for the implementation of the provisions of this Protocol through bilateral, regional and multilateral channels.

Article 26. Conference of the Parties serving as the meeting of the Parties to this Protocol

1. The Conference of the Parties shall serve as the meeting of the Parties to this Protocol.

2. Parties to the Convention that are not Parties to this Protocol may participate as observers in the proceedings of any meeting of the Conference of the Parties serving as the meeting of the Parties to this Protocol. When the Conference of the Parties serves as the meeting of the Parties to this Protocol, decisions under this Protocol shall be taken only by those that are Parties to it.

3. When the Conference of the Parties serves as the meeting of the Parties to this Protocol, any member of the Bureau of the Conference of the Parties representing a Party to the Convention but, at that time, not a Party to this Protocol, shall be substituted by a member to be elected by and from among the Parties to this Protocol.

4. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall keep under regular review the implementation of this Protocol and shall make, within its mandate, the decisions necessary to promote its effective implementation. It shall perform the functions assigned to it by this Protocol and shall:

(a) Make recommendations on any matters necessary for the implementation of this Protocol;

(b) Establish such subsidiary bodies as are deemed necessary for the implementation of this Protocol;

(c) Seek and utilize, where appropriate, the services and cooperation of, and information provided by, competent international organizations and intergovernmental and non-governmental bodies;

(d) Establish the form and the intervals for transmitting the information to be submitted in accordance with Article 29 of this Protocol and consider such information as well as reports submitted by any subsidiary body;

(e) Consider and adopt, as required, amendments to this Protocol and its Annex, as well as any additional annexes to this Protocol, that are deemed necessary for the implementation of this Protocol; and

(*f*) Exercise such other functions as may be required for the implementation of this Protocol.

5. The rules of procedure of the Conference of the Parties and financial rules of the Convention shall be applied, *mutatis mutandis*, under this Protocol, except as may be otherwise decided by consensus by the Conference of the Parties serving as the meeting of the Parties to this Protocol.

6. The first meeting of the Conference of the Parties serving as the meeting of the Parties to this Protocol shall be convened by the Secretariat and held concurrently with the first meeting of the Conference of the Parties that is scheduled after the date of the entry into force of this Protocol. Subsequent ordinary meetings of the Conference of the Parties serving as the meeting of the Parties to this Protocol shall be held concurrently with ordinary meetings of the Conference of the Parties, unless otherwise decided by the Conference of the Parties serving as the meeting of the Parties to this Protocol.

7. Extraordinary meetings of the Conference of the Parties serving as the meeting of the Parties to this Protocol shall be held at such other times as may be deemed necessary by the Conference of the Parties serving as the meeting of the Parties to this Protocol, or at the written request of any Party, provided that, within six months of the request being communicated to the Parties by the Secretariat, it is supported by at least one third of the Parties.

8. The United Nations, its specialized agencies and the International Atomic Energy Agency, as well as any State member thereof or observers thereto not party to the Convention, may be represented as observers at meetings of the Conference of the Parties serving as the meeting of the Parties to this Protocol. Any body or agency, whether national or international, governmental or non-governmental, that is qualified in matters covered by this Protocol and that has informed the Secretariat of its wish to be represented at a meeting of the Conference of the Parties serving as a meeting of the Parties to this Protocol as an observer, may be so admitted, unless at least one third of the Parties present object.

Except as otherwise provided in this Article, the admission and participation of observers shall be subject to the rules of procedure, as referred to in paragraph 5 above.

Article 27. Subsidiary bodies

1. Any subsidiary body established by or under the Convention may serve this Protocol, including upon a decision of the Conference of the Parties serving as the meeting of the Parties to this Protocol. Any such decision shall specify the tasks to be undertaken.

2. Parties to the Convention that are not Parties to this Protocol may participate as observers in the proceedings of any meeting of any such subsidiary bodies. When a subsidiary body of the Convention serves as a subsidiary body to this Protocol, decisions under this Protocol shall be taken only by Parties to this Protocol.

3. When a subsidiary body of the Convention exercises its functions with regard to matters concerning this Protocol, any member of the bureau of that subsidiary body representing a Party to the Convention but, at that time, not a Party to this Protocol, shall be substituted by a member to be elected by and from among the Parties to this Protocol.

Article 28. Secretariat

1. The Secretariat established by Article 24 of the Convention shall serve as the secretariat to this Protocol.

2. Article 24, paragraph 1, of the Convention on the functions of the Secretariat shall apply, *mutatis mutandis*, to this Protocol.

3. To the extent that they are distinct, the costs of the secretariat services for this Protocol shall be met by the Parties hereto. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall, at its first meeting, decide on the necessary budgetary arrangements to this end.

Article 29. Monitoring and reporting

Each Party shall monitor the implementation of its obligations under this Protocol, and shall, at intervals and in the format to be determined by the Conference of the Parties serving as the meeting of the Parties to this Protocol, report to the Conference of the Parties serving as the meeting of the Parties to this Protocol on measures that it has taken to implement this Protocol.

Article 30. Procedures and mechanisms to promote compliance with this Protocol

The Conference of the Parties serving as the meeting of the Parties to this Protocol shall, at its first meeting, consider and approve cooperative procedures and institutional mechanisms to promote compliance with the provisions of this Protocol and to address cases of non-compliance. These procedures and mechanisms shall include provisions to offer advice or assistance, where appropriate. They shall be separate from, and without prejudice to, the dispute settlement procedures and mechanisms under Article 27 of the Convention.

Article 31. Assessment and review

The Conference of the Parties serving as the meeting of the Parties to this Protocol shall undertake, four years after the entry into force of this Protocol and thereafter at intervals determined by the Conference of the Parties serving as the meeting of the Parties to this Protocol, an evaluation of the effectiveness of this Protocol.

Article 32. Signature

This Protocol shall be open for signature by Parties to the Convention at the United Nations Headquarters in New York, from 2 February 2011 to 1 February 2012.

Article 33. Entry into force

1. This Protocol shall enter into force on the ninetieth day after the date of deposit of the fiftieth instrument of ratification, acceptance, approval or accession by States or regional economic integration organizations that are Parties to the Convention.

2. This Protocol shall enter into force for a State or regional economic integration organization that ratifies, accepts or approves this Protocol or accedes thereto after the deposit of the fiftieth instrument as referred to in paragraph 1 above, on the ninetieth day after the date on which that State or regional economic integration organization deposits its instrument of ratification, acceptance, approval or accession, or on the date on which the Convention enters into force for that State or regional economic integration organization, whichever shall be the later.

3. For the purposes of paragraphs 1 and 2 above, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by member States of such organization.

Article 34. Reservations

No reservations may be made to this Protocol.

Article 35. Withdrawal

1. At any time after two years from the date on which this Protocol has entered into force for a Party, that Party may withdraw from this Protocol by giving written notification to the Depositary.

2. Any such withdrawal shall take place upon expiry of one year after the date of its receipt by the Depositary, or on such later date as may be specified in the notification of the withdrawal.

Article 36. Authentic texts

The original of this Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

In witness whereof the undersigned, being duly authorized to that effect, have signed this Protocol on the dates indicated.

Done at Nagoya on this twenty-ninth day of October, two thousand and ten.

Annex

Monetary and non-monetary benefits

Monetary benefits may include, but not be limited to:

(*a*) Access fees/fee per sample collected or otherwise acquired;

(*b*) Up-front payments;

(*c*) Milestone payments;

(*d*) Payment of royalties;

(*e*) Licence fees in case of commercialization;

(*f*) Special fees to be paid to trust funds supporting conservation and sustainable use of biodiversity;

(*g*) Salaries and preferential terms where mutually agreed;

(*h*) Research funding;

(*i*) Joint ventures;

(*j*) Joint ownership of relevant intellectual property rights.

2. Non-monetary benefits may include, but not be limited to:

(*a*) Sharing of research and development results;

(*b*) Collaboration, cooperation and contribution in scientific research and development programmes, particularly biotechnological research activities, where possible in the Party providing genetic resources;

(*c*) Participation in product development;

(*d*) Collaboration, cooperation and contribution in education and training;

(*e*) Admittance to *ex situ* facilities of genetic resources and to databases;

(*f*) Transfer to the provider of the genetic resources of knowledge and technology under fair and most favourable terms, including on concessional and preferential terms where agreed, in particular, knowledge and technology that make use of genetic resources, including biotechnology, or that are relevant to the conservation and sustainable utilization of biological diversity;

(*g*) Strengthening capacities for technology transfer;

(*h*) Institutional capacity-building;

(*i*) Human and material resources to strengthen the capacities for the administration and enforcement of access regulations;

(*j*) Training related to genetic resources with the full participation of countries providing genetic resources, and where possible, in such countries;

(*k*) Access to scientific information relevant to conservation and sustainable use of biological diversity, including biological inventories and taxonomic studies;

(*l*) Contributions to the local economy;

(*m*) Research directed towards priority needs, such as health and food security, taking into account domestic uses of genetic resources in the Party providing genetic resources;

(*n*) Institutional and professional relationships that can arise from an access and benefit sharing agreement and subsequent collaborative activities;

(*o*) Food and livelihood security benefits;

(*p*) Social recognition;

(*q*) Joint ownership of relevant intellectual property rights.

5. Nagoya-Kuala Lumpur Supplementary Protocol on Liability and Redress to the Cartagena Protocol on Biosafety. Nagoya, 15 October 2010*

The Parties to this Supplementary Protocol,

Being Parties to the Cartagena Protocol on Biosafety to the Convention on Biological Diversity, hereinafter referred to as "the Protocol",

Taking into account Principle 13 of the Rio Declaration on Environment and Development,

Reaffirming the precautionary approach contained in Principle 15 of the Rio Declaration on Environment and Development,

Recognizing the need to provide for appropriate response measures where there is damage or sufficient likelihood of damage, consistent with the Protocol,

Recalling Article 27 of the Protocol,

Have agreed as follows:

Article 1. Objective

The objective of this Supplementary Protocol is to contribute to the conservation and sustainable use of biological diversity, taking also into account risks to human health, by providing international rules and procedures in the field of liability and redress relating to living modified organisms.

Article 2. Use of terms

1. The terms used in Article 2 of the Convention on Biological Diversity, hereinafter referred to as "the Convention", and Article 3 of the Protocol shall apply to this Supplementary Protocol.

2. In addition, for the purposes of this Supplementary Protocol:

(*a*) "Conference of the Parties serving as the meeting of the Parties to the Protocol" means the Conference of the Parties to the Convention serving as the meeting of the Parties to the Protocol;

(*b*) "Damage" means an adverse effect on the conservation and sustainable use of biological diversity, taking also into account risks to human health, that:

(i) Is measurable or otherwise observable taking into account, wherever available, scientifically-established baselines recognized by a competent authority that

* Adopted on 15 October 2010 at Nagoya, Japan, during the fifth meeting of the Parties to the Cartagena Protocol on Biosafety.

takes into account any other human induced variation and natural variation; and

(ii) Is significant as set out in paragraph 3 below;

(*c*) "Operator" means any person in direct or indirect control of the living modified organism which could, as appropriate and as determined by domestic law, include, *inter alia,* the permit holder, person who placed the living modified organism on the market, developer, producer, notifier, exporter, importer, carrier or supplier;

(*d*) "Response measures" means reasonable actions to:

(i) Prevent, minimize, contain, mitigate, or otherwise avoid damage, as appropriate;

(ii) Restore biological diversity through actions to be undertaken in the following order of preference:

a. Restoration of biological diversity to the condition that existed before the damage occurred, or its nearest equivalent; and where the competent authority determines this is not possible;

b. Restoration by, *inter alia,* replacing the loss of biological diversity with other components of biological diversity for the same, or for another type of use either at the same or, as appropriate, at an alternative location.

3. A "significant" adverse effect is to be determined on the basis of factors, such as:

(*a*) The long-term or permanent change, to be understood as change that will not be redressed through natural recovery within a reasonable period of time;

(*b*) The extent of the qualitative or quantitative changes that adversely affect the components of biological diversity;

(*c*) The reduction of the ability of components of biological diversity to provide goods and services;

(*d*) The extent of any adverse effects on human health in the context of the Protocol.

Article 3. Scope

1. This Supplementary Protocol applies to damage resulting from living modified organisms which find their origin in a transboundary movement. The living modified organisms referred to are those:

(*a*) Intended for direct use as food or feed, or for processing;

(*b*) Destined for contained use;

(*c*) Intended for intentional introduction into the environment.

2. With respect to intentional transboundary movements, this Supplementary Protocol applies to damage resulting from any authorized use of the living modified organisms referred to in paragraph 1 above.

3. This Supplementary Protocol also applies to damage resulting from unintentional transboundary movements as referred to in Article 17 of the Protocol as well as damage resulting from illegal transboundary movements as referred to in Article 25 of the Protocol.

4. This Supplementary Protocol applies to damage resulting from a transboundary movement of living modified organisms that started after the entry into force of this Supplementary Protocol for the Party into whose jurisdiction the transboundary movement was made.

5. This Supplementary Protocol applies to damage that occurred in areas within the limits of the national jurisdiction of Parties.

6. Parties may use criteria set out in their domestic law to address damage that occurs within the limits of their national jurisdiction.

7. Domestic law implementing this Supplementary Protocol shall also apply to damage resulting from transboundary movements of living modified organisms from non-Parties.

Article 4. Causation

A causal link shall be established between the damage and the living modified organism in question in accordance with domestic law.

Article 5. Response measures

1. Parties shall require the appropriate operator or operators, in the event of damage, subject to any requirements of the competent authority, to:

(*a*) Immediately inform the competent authority;

(*b*) Evaluate the damage; and

(*c*) Take appropriate response measures.

2. The competent authority shall:

(*a*) Identify the operator which has caused the damage;

(*b*) Evaluate the damage; and

(*c*) Determine which response measures should be taken by the operator.

3. Where relevant information, including available scientific information or information available in the Biosafety Clearing-House, indicates that there is a sufficient likelihood that damage will result if timely response measures are not taken, the operator shall be required to take appropriate response measures so as to avoid such damage.

4. The competent authority may implement appropriate response measures, including, in particular, when the operator has failed to do so.

5. The competent authority has the right to recover from the operator the costs and expenses of, and incidental to, the evaluation of the damage and the implementation of any such appropriate response measures. Parties may provide, in their domestic law, for other situations in which the operator may not be required to bear the costs and expenses.

6. Decisions of the competent authority requiring the operator to take response measures should be reasoned. Such decisions should be notified to the operator. Domestic law shall provide for remedies, including the opportunity for administrative or judicial review of such decisions. The competent authority shall, in accordance with domestic law, also inform the operator of the available remedies. Recourse to such remedies shall not impede

the competent authority from taking response measures in appropriate circumstances, unless otherwise provided by domestic law.

7. In implementing this Article and with a view to defining the specific response measures to be required or taken by the competent authority, Parties may, as appropriate, assess whether response measures are already addressed by their domestic law on civil liability.

8. Response measures shall be implemented in accordance with domestic law.

Article 6. Exemptions

1. Parties may provide, in their domestic law, for the following exemptions:

(*a*) Act of God or *force majeure*; and

(*b*) Act of war or civil unrest.

2. Parties may provide, in their domestic law, for any other exemptions or mitigations as they may deem fit.

Article 7. Time limits

Parties may provide, in their domestic law, for:

(*a*) Relative and/or absolute time limits including for actions related to response measures; and

(*b*) The commencement of the period to which a time limit applies.

Article 8. Financial limits

Parties may provide, in their domestic law, for financial limits for the recovery of costs and expenses related to response measures.

Article 9. Right of recourse

This Supplementary Protocol shall not limit or restrict any right of recourse or indemnity that an operator may have against any other person.

Article 10. Financial security

1. Parties retain the right to provide, in their domestic law, for financial security.

2. Parties shall exercise the right referred to in paragraph 1 above in a manner consistent with their rights and obligations under international law, taking into account the final three preambular paragraphs of the Protocol.

3. The first meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol after the entry into force of the Supplementary Protocol shall request the Secretariat to undertake a comprehensive study which shall address, *inter alia*:

(*a*) The modalities of financial security mechanisms;

(*b*) An assessment of the environmental, economic and social impacts of such mechanisms, in particular on developing countries; and

(*c*) An identification of the appropriate entities to provide financial security.

Article 11. Responsibility of States for internationally wrongful acts

This Supplementary Protocol shall not affect the rights and obligations of States under the rules of general international law with respect to the responsibility of States for internationally wrongful acts.

Article 12. Implementation and relation to civil liability

1. Parties shall provide, in their domestic law, for rules and procedures that address damage. To implement this obligation, Parties shall provide for response measures in accordance with this Supplementary Protocol and may, as appropriate:

(*a*) Apply their existing domestic law, including, where applicable, general rules and procedures on civil liability;

(*b*) Apply or develop civi11iability rules and procedures specifically for this purpose; or

(*c*) Apply or develop a combination of both.

2. Parties shall, with the aim of providing adequate rules and procedures in their domestic law on civil liability for material or personal damage associated with the damage as defined in Article 2, paragraph 2 (b):

(*a*) Continue to apply their existing general law on civil liability;

(*b*) Develop and apply or continue to apply civil liability law specifically for that purpose; or

(*c*) Develop and apply or continue to apply a combination of both.

3. When developing civil liability law as referred to in subparagraphs (b) or (c) of paragraphs 1 or 2 above, Parties shall, as appropriate, address, *inter alia*, the following elements:

(*a*) Damage;

(*b*) Standard of liability, including strict or fault-based liability;

(*c*) Channelling of liability, where appropriate;

(*d*) Right to bring claims.

Article 13. Assessment and review

The Conference of the Parties serving as the meeting of the Parties to the Protocol shall undertake a review of the effectiveness of this Supplementary Protocol five years after its entry into force and every five years thereafter, provided information requiring such a review has been made available by Parties. The review shall be undertaken in the context of the assessment and review of the Protocol as specified in Article 35 of the Protocol, unless otherwise decided by the Parties to this Supplementary Protocol. The first review shall include a review of the effectiveness of Articles 10 and 12.

Article 14. Conference of the Parties serving as the meeting of the Parties to the Protocol

1. Subject to paragraph 2 of Article 32 of the Convention, the Conference of the parties serving as the meeting of the Parties to the Protocol shall serve as the meeting of the Parties to this Supplementary Protocol.

2. The Conference of the Parties serving as the meeting of the Parties to the Protocol shall keep under regular review the implementation of this Supplementary Protocol and shall make, within its mandate, the decisions necessary to promote its effective implementation. It shall perform the functions assigned to it by this Supplementary Protocol and, *mutatis mutandis,* the functions assigned to it by paragraphs 4 (a) and (f) of Article 29 of the Protocol.

Article 15. Secretariat

The Secretariat established by Article 24 of the Convention shall serve as the secretariat to this Supplementary Protocol.

Article 16. Relationship with the Convention and the Protocol

1. This Supplementary Protocol shall supplement the Protocol and shall neither modify nor amend the Protocol.

2. This Supplementary Protocol shall not affect the rights and obligations of the Parties to this Supplementary Protocol under the Convention and the Protocol.

3. Except as otherwise provided in this Supplementary Protocol, the provisions of the Convention and the Protocol shall apply, *mutatis mutandis*, to this Supplementary Protocol.

4. Without prejudice to paragraph 3 above, this Supplementary Protocol shall not affect the rights and obligations of a Party under international law.

Article 17. Signature

This Supplementary Protocol shall be open for signature by Parties to the Protocol at the United Nations Headquarters in New York from 7 March 2011 to 6 March 2012.

Article 18. Entry into force

1. This Supplementary Protocol shall enter into force on the ninetieth day after the date of deposit of the fortieth instrument of ratification, acceptance, approval or accession by States or regional economic integration organizations that are Parties to the Protocol.

2. This Supplementary Protocol shall enter into force for a State or regional economic integration organization that ratifies, accepts or approves it or accedes thereto after the deposit of the fortieth instrument as referred to in paragraph 1 above, on the ninetieth day after the date on which that State or regional economic integration organization deposits its instrument of ratification, acceptance, approval, or accession, or on the date on which the Protocol enters into force for that State or regional economic integration organization, whichever shall be the later.

3. For the purposes of paragraphs 1 and 2 above, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by member States of such organization.

Article 19. Reservations

No reservations may be made to this Supplementary Protocol.

Article 20. Withdrawal

1. At any time after two years from the date on which this Supplementary Protocol has entered into force for a Party, that Party may withdraw from this Supplementary Protocol by giving written notification to the Depositary.

2. Any such withdrawal shall take place upon expiry of one year after the date of its receipt by the Depositary, or on such later date as may be specified in the notification of the withdrawal.

3. Any Party which withdraws from the Protocol in accordance with Article 39 of the Protocol shall be considered as also having withdrawn from this Supplementary Protocol.

Article 21. Authentic texts

The original of this Supplementary Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

In witness whereof the undersigned, being duly authorized to that effect, have signed this Supplementary Protocol.

Done at Nagoya on this fifteenth day of October two thousand and ten.

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 the Suppression of Unlawful Acts Relating to International Civil Aviation. Beijing, 10 September 2010*

The States Parties to this Convention,

Deeply concerned that unlawful acts against civil aviation jeopardize the safety and security of persons and property, seriously affect the operation of air services, airports and air navigation, and undermine the confidence of the peoples of the world in the safe and orderly conduct of civil aviation for all States;

Recognizing that new types of threats against civil aviation require new concerted efforts and policies of cooperation on the part of States; and

Being convinced that in order to better address these threats, there is an urgent need to strengthen the legal framework for international cooperation in preventing and suppressing unlawful acts against civil aviation;

Have agreed as follows:

* Adopted at the International Conference on Air Law (Diplomatic Conference on Aviation Security), held under the auspices of the International Civil Aviation Organization in Beijing, China, from 30 August to 10 September 2010.

Article 1

1. Any person commits an offence if that person unlawfully and intentionally:

(*a*) performs an act of violence against a person on board an aircraft in flight if that act is likely to endanger the safety of that aircraft; or

(*b*) destroys an aircraft in service or causes damage to such an aircraft which renders it incapable of flight or which is likely to endanger its safety in flight; or

(*c*) places or causes to be placed on an aircraft in service, by any means whatsoever, a device or substance which is likely to destroy that aircraft, or to cause damage to it which renders it incapable of flight, or to cause damage to it which is likely to endanger its safety in flight; or

(*d*) destroys or damages air navigation facilities or interferes with their operation, if any such act is likely to endanger the safety of aircraft in flight; or

(*e*) communicates information which that person knows to be false, thereby endangering the safety of an aircraft in flight; or

(*f*) uses an aircraft in service for the purpose of causing death, serious bodily injury, or serious damage to property or the environment; or

(*g*) releases or discharges from an aircraft in service any BCN weapon or explosive, radioactive, or similar substances in a manner that causes or is likely to cause death, serious bodily injury or serious damage to property or the environment; or

(*h*) uses against or on board an aircraft in service any BCN weapon or explosive, radioactive, or similar substances in a manner that causes or is likely to cause death, serious bodily injury or serious damage to property or the environment; or

(*i*) transports, causes to be transported, or facilitates the transport of, on board an aircraft:

(1) any explosive or radioactive material, knowing that it is intended to be used to cause, or in a threat to cause, with or without a condition, as is provided for under national law, death or serious injury or damage for the purpose of intimidating a population, or compelling a government or an international organization to do or to abstain from doing any act; or

(2) any BCN weapon, knowing it to be a BCN weapon as defined in Article 2; or

(3) any source material, special fissionable material, or equipment or material especially designed or prepared for the processing, use or production of special fissionable material, knowing that it is intended to be used in a nuclear explosive activity or in any other nuclear activity not under safeguards pursuant to a safeguards agreement with the International Atomic Energy Agency; or

(4) any equipment, materials or software or related technology that significantly contributes to the design, manufacture or delivery of a BCN weapon without lawful authorization and with the intention that it will be used for such purpose;

provided that for activities involving a State Party, including those undertaken by a person or legal entity authorized by a State Party, it shall not be an offence under subparagraphs (3) and (4) if the transport of such items or materials is consistent with or is

for a use or activity that is consistent with its rights, responsibilities and obligations under the applicable multilateral non-proliferation treaty to which it is a party including those referred to in Article 7.

2. Any person commits an offence if that person unlawfully and intentionally, using any device, substance or weapon:

(*a*) performs an act of violence against a person at an airport serving international civil aviation which causes or is likely to cause serious injury or death; or

(*b*) destroys or seriously damages the facilities of an airport serving international civil aviation or aircraft not in service located thereon or disrupts the services of the airport,

if such an act endangers or is likely to endanger safety at that airport.

3. Any person also commits an offence if that person:

(*a*) makes a threat to commit any of the offences in subparagraphs (a), (b), (c), (d), (f), (g) and (h) of paragraph 1 or in paragraph 2 of this Article; or

(*b*) unlawfully and intentionally causes any person to receive such a threat, under circumstances which indicate that the threat is credible.

4. Any person also commits an offence if that person:

(*a*) attempts to commit any of the offences set forth in paragraph 1 or 2 of this Article; or

(*b*) organizes or directs others to commit an offence set forth in paragraph 1, 2, 3 or 4(a) of this Article; or

(*c*) participates as an accomplice in an offence set forth in paragraph 1, 2, 3 or 4(a) of this Article; or

(*d*) unlawfully and intentionally assists another person to evade investigation, prosecution or punishment, knowing that the person has committed an act that constitutes an offence set forth in paragraph 1, 2, 3, 4(a), 4(b) or 4(c) of this Article, or that the person is wanted for criminal prosecution by law enforcement authorities for such an offence or has been sentenced for such an offence.

5. Each State Party shall also establish as offences, when committed intentionally, whether or not any of the offences set forth in paragraph 1, 2 or 3 of this Article is actually committed or attempted, either or both of the following:

(*a*) agreeing with one or more other persons to commit an offence set forth in paragraph 1, 2 or 3 of this Article and, where required by national law, involving an act undertaken by one of the participants in furtherance of the agreement; or

(*b*) contributing in any other way to the commission of one or more offences set forth in paragraph 1, 2 or 3 of this Article by a group of persons acting with a common purpose, and such contribution shall either:

(i) be made with the aim of furthering the general criminal activity or purpose of the group, where such activity or purpose involves the commission of an offence set forth in paragraph 1, 2 or 3 of this Article; or

(ii) be made in the knowledge of the intention of the group to commit an offence set forth in paragraph 1, 2 or 3 of this Article.

Article 2

For the purposes of this Convention:

(*a*) an aircraft is considered to be in flight at any time from the moment when all its external doors are closed following embarkation until the moment when any such door is opened for disembarkation; in the case of a forced landing, the flight shall be deemed to continue until the competent authorities take over the responsibility for the aircraft and for persons and property on board;

(*b*) an aircraft is considered to be in service from the beginning of the preflight preparation of the aircraft by ground personnel or by the crew for a specific flight until twenty-four hours after any landing; the period of service shall, in any event, extend for the entire period during which the aircraft is in flight as defined in paragraph (a) of this Article;

(*c*) "Air navigation facilities" include signals, data, information or systems necessary for the navigation of the aircraft;

(*d*) "Toxic chemical" means any chemical which through its chemical action on life processes can cause death, temporary incapacitation or permanent harm to humans or animals. This includes all such chemicals, regardless of their origin or of their method of production, and regardless of whether they are produced in facilities, in munitions or elsewhere;

(*e*) "Radioactive material" means nuclear material and other radioactive substances which contain nuclides which undergo spontaneous disintegration (a process accompanied by emission of one or more types of ionizing radiation, such as alpha-, beta-, neutron particles and gamma rays) and which may, owing to their radiological or fissile properties, cause death, serious bodily injury or substantial damage to property or to the environment;

(*f*) "Nuclear material" means plutonium, except that with isotopic concentration exceeding 80 per cent in plutonium-238; uranium-233; uranium enriched in the isotope 235 or 233; uranium containing the mixture of isotopes as occurring in nature other than in the form of ore or ore residue; or any material containing one or more of the foregoing;

(*g*) "Uranium enriched in the isotope 235 or 233" means uranium containing the isotope 235 or 233 or both in an amount such that the abundance ratio of the sum of these isotopes to the isotope 238 is greater than the ratio of the isotope 235 to the isotope 238 occurring in nature;

(*h*) "BCN weapon" means:

(a) "biological weapons", which are:

(i) microbial or other biological agents, or toxins whatever their origin or method of production, of types and in quantities that have no justification for prophylactic, protective or other peaceful purposes; or

(ii) weapons, equipment or means of delivery designed to use such agents or toxins for hostile purposes or in armed conflict.

(b) "chemical weapons", which are, together or separately:

(i) toxic chemicals and their precursors, except where intended for:

(A) industrial, agricultural, research, medical, pharmaceutical or other peaceful purposes; or

(B) protective purposes, namely those purposes directly related to protection against toxic chemicals and to protection against chemical weapons; or

(C) military purposes not connected with the use of chemical weapons and not dependent on the use of the toxic properties of chemicals as a method of warfare; or

(D) law enforcement including domestic riot control purposes, as long as the types and quantities are consistent with such purposes;

(ii) munitions and devices specifically designed to cause death or other harm through the toxic properties of those toxic chemicals specified in subparagraph (b)(i), which would be released as a result of the employment of such munitions and devices;

(iii) any equipment specifically designed for use directly in connection with the employment of munitions and devices specified in subparagraph (b)(ii).

(c) nuclear weapons and other nuclear explosive devices.

(*i*) "Precursor" means any chemical reactant which takes part at any stage in the production by whatever method of a toxic chemical. This includes any key component of a binary or multicomponent chemical system;

(*j*) the terms "source material" and "special fissionable material" have the same meaning as given to those terms in the Statute of the International Atomic Energy Agency, done at New York on 26 October 1956.

Article 3

Each State Party undertakes to make the offences set forth in Article 1 punishable by severe penalties.

Article 4

1. Each State Party, in accordance with its national legal principles, may take the necessary measures to enable a legal entity located in its territory or organized under its laws to be held liable when a person responsible for management or control of that legal entity has, in that capacity, committed an offence set forth in Article 1. Such liability may be criminal, civil or administrative.

2. Such liability is incurred without prejudice to the criminal liability of individuals having committed the offences.

3. If a State Party takes the necessary measures to make a legal entity liable in accordance with paragraph 1 of this Article, it shall endeavour to ensure that the applicable criminal, civil or administrative sanctions are effective, proportionate and dissuasive. Such sanctions may include monetary sanctions.

Article 5

1. This Convention shall not apply to aircraft used in military, customs or police services.

2. In the cases contemplated in subparagraphs (a), (b), (c), (e), (f), (g), (h) and (i) of paragraph 1 of Article 1, this Convention shall apply irrespective of whether the aircraft is engaged in an international or domestic flight, only if:

(*a*) the place of take-off or landing, actual or intended, of the aircraft is situated outside the territory of the State of registry of that aircraft; or

(*b*) the offence is committed in the territory of a State other than the State of registry of the aircraft.

3. Notwithstanding paragraph 2 of this Article, in the cases contemplated in subparagraphs (a), (b), (c), (e), (f), (g), (h) and (i) of paragraph 1 of Article 1, this Convention shall also apply if the offender or the alleged offender is found in the territory of a State other than the State of registry of the aircraft.

4. With respect to the States Parties mentioned in Article 15 and in the cases set forth in subparagraphs (a), (b), (c), (e), (f), (g), (h) and (i) of paragraph 1 of Article 1, this Convention shall not apply if the places referred to in subparagraph (a) of paragraph 2 of this Article are situated within the territory of the same State where that State is one of those referred to in Article 15, unless the offence is committed or the offender or alleged offender is found in the territory of a State other than that State.

5. In the cases contemplated in subparagraph (d) of paragraph 1 of Article 1, this Convention shall apply only if the air navigation facilities are used in international air navigation.

6. The provisions of paragraphs 2, 3, 4 and 5 of this Article shall also apply in the cases contemplated in paragraph 4 of Article 1.

Article 6

1. Nothing in this Convention shall affect other rights, obligations and responsibilities of States and individuals under international law, in particular the purposes and principles of the Charter of the United Nations, the Convention on International Civil Aviation and international humanitarian law.

2. The activities of armed forces during an armed conflict, as those terms are understood under international humanitarian law, which are governed by that law are not governed by this Convention, and the activities undertaken by military forces of a State in the exercise of their official duties, inasmuch as they are governed by other rules of international law, are not governed by this Convention.

3. The provisions of paragraph 2 of this Article shall not be interpreted as condoning or making lawful otherwise unlawful acts, or precluding prosecution under other laws.

Article 7

Nothing in this Convention shall affect the rights, obligations and responsibilities under the Treaty on the Non-Proliferation of Nuclear Weapons, signed at London, Moscow and Washington on 1 July 1968, the Convention on the Prohibition of the Development,

Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction, signed at London, Moscow and Washington on 10 April 1972, or the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, signed at Paris on 13 January 1993, of States Parties to such treaties.

Article 8

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in Article 1 in the following cases:

(*a*) when the offence is committed in the territory of that State;

(*b*) when the offence is committed against or on board an aircraft registered in that State;

(*c*) when the aircraft on board which the offence is committed lands in its territory with the alleged offender still on board;

(*d*) when the offence is committed against or on board an aircraft leased without crew to a lessee whose principal place of business or, if the lessee has no such place of business, whose permanent residence is in that State;

(*e*) when the offence is committed by a national of that State.

2. Each State Party may also establish its jurisdiction over any such offence in the following cases:

(*a*) when the offence is committed against a national of that State;

(*b*) when the offence is committed by a stateless person whose habitual residence is in the territory of that State.

3. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over the offences set forth in Article 1, in the case where the alleged offender is present in its territory and it does not extradite that person pursuant to Article 12 to any of the States Parties that have established their jurisdiction in accordance with the applicable paragraphs of this Article with regard to those offences.

4. This Convention does not exclude any criminal jurisdiction exercised in accordance with national law.

Article 9

1. Upon being satisfied that the circumstances so warrant, any State Party in the territory of which the offender or the alleged offender is present, shall take that person into custody or take other measures to ensure that person's presence. The custody and other measures shall be as provided in the law of that State but may only be continued for such time as is necessary to enable any criminal or extradition proceedings to be instituted.

2. Such State shall immediately make a preliminary enquiry into the facts.

3. Any person in custody pursuant to paragraph 1 of this Article shall be assisted in communicating immediately with the nearest appropriate representative of the State of which that person is a national.

4. When a State Party, pursuant to this Article, has taken a person into custody, it shall immediately notify the States Parties which have established jurisdiction under paragraph 1 of Article 8 and established jurisdiction and notified the Depositary under subparagraph (a) of paragraph 4 of Article 21 and, if it considers it advisable, any other interested States of the fact that such person is in custody and of the circumstances which warrant that person's detention. The State Party which makes the preliminary enquiry contemplated in paragraph 2 of this Article shall promptly report its findings to the said States Parties and shall indicate whether it intends to exercise jurisdiction.

Article 10

The State Party in the territory of which the alleged offender is found shall, if it does not extradite that person, be obliged, without exception whatsoever and whether or not the offence was committed in its territory, to submit the case to its competent authorities for the purpose of prosecution. Those authorities shall take their decision in the same manner as in the case of any ordinary offence of a serious nature under the law of that State.

Article 11

Any person who is taken into custody, or regarding whom any other measures are taken or proceedings are being carried out pursuant to this Convention, shall be guaranteed fair treatment, including enjoyment of all rights and guarantees in conformity with the law of the State in the territory of which that person is present and applicable provisions of international law, including international human rights law.

Article 12

1. The offences set forth in Article 1 shall be deemed to be included as extraditable offences in any extradition treaty existing between States Parties. States Parties undertake to include the offences as extraditable offences in every extradition treaty to be concluded between them.

2. If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may at its option consider this Convention as the legal basis for extradition in respect of the offences set forth in Article 1. Extradition shall be subject to the other conditions provided by the law of the requested State.

3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize the offences set forth in Article 1 as extraditable offences between themselves subject to the conditions provided by the law of the requested State.

4. Each of the offences shall be treated, for the purpose of extradition between States Parties, as if it had been committed not only in the place in which it occurred but also in the territories of the States Parties required to establish their jurisdiction in accordance with subparagraphs (b), (c), (d) and (e) of paragraph 1 of Article 8, and who have established jurisdiction in accordance with paragraph 2 of Article 8.

5. The offences set forth in subparagraphs (a) and (b) of paragraph 5 of Article 1 shall, for the purpose of extradition between States Parties, be treated as equivalent.

Article 13

None of the offences set forth in Article 1 shall be regarded, for the purposes of extradition or mutual legal assistance, as a political offence or as an offence connected with a political offence or as an offence inspired by political motives. Accordingly, a request for extradition or for mutual legal assistance based on such an offence may not be refused on the sole ground that it concerns a political offence or an offence connected with a political offence or an offence inspired by political motives.

Article 14

Nothing in this Convention shall be interpreted as imposing an obligation to extradite or to afford mutual legal assistance if the requested State Party has substantial grounds for believing that the request for extradition for offences set forth in Article 1 or for mutual legal assistance with respect to such offences has been made for the purpose of prosecuting or punishing a person on account of that person's race, religion, nationality, ethnic origin, political opinion or gender, or that compliance with the request would cause prejudice to that person's position for any of these reasons.

Article 15

The States Parties which establish joint air transport operating organizations or international operating agencies, which operate aircraft which are subject to joint or international registration shall, by appropriate means, designate for each aircraft the State among them which shall exercise the jurisdiction and have the attributes of the State of registry for the purpose of this Convention and shall give notice thereof to the Secretary General of the International Civil Aviation Organization who shall communicate the notice to all States Parties to this Convention.

Article 16

1. States Parties shall, in accordance with international and national law, endeavour to take all practicable measures for the purpose of preventing the offences set forth in Article 1.

2. When, due to the commission of one of the offences set forth in Article 1, a flight has been delayed or interrupted, any State Party in whose territory the aircraft or passengers or crew are present shall facilitate the continuation of the journey of the passengers and crew as soon as practicable, and shall without delay return the aircraft and its cargo to the persons lawfully entitled to possession.

Article 17

1. States Parties shall afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of the offences set forth in Article 1. The law of the State requested shall apply in all cases.

2. The provisions of paragraph 1 of this Article shall not affect obligations under any other treaty, bilateral or multilateral, which governs or will govern, in whole or in part, mutual assistance in criminal matters.

Article 18

Any State Party having reason to believe that one of the offences set forth in Article 1 will be committed shall, in accordance with its national law, furnish any relevant information in its possession to those States Parties which it believes would be the States set forth in paragraphs 1 and 2 of Article 8.

Article 19

Each State Party shall in accordance with its national law report to the Council of the International Civil Aviation Organization as promptly as possible any relevant information in its possession concerning:

(*a*) the circumstances of the offence;

(*b*) the action taken pursuant to paragraph 2 of Article 16;

(*c*) the measures taken in relation to the offender or the alleged offender and, in particular, the results of any extradition proceedings or other legal proceedings.

Article 20

1. Any dispute between two or more States Parties concerning the interpretation or application of this Convention which cannot be settled through negotiation, shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the Parties are unable to agree on the organization of the arbitration, any one of those Parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.

2. Each State may at the time of signature, ratification, acceptance or approval of this Convention or accession thereto, declare that it does not consider itself bound by the preceding paragraph. The other States Parties shall not be bound by the preceding paragraph with respect to any State Party having made such a reservation.

3. Any State Party having made a reservation in accordance with the preceding paragraph may at any time withdraw this reservation by notification to the Depositary.

Article 21

1. This Convention shall be open for signature in Beijing on 10 September 2010 by States participating in the Diplomatic Conference on Aviation Security held at Beijing from 30 August to 10 September 2010. After 27 September 2010, this 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 22.

2. This Convention is subject to ratification, acceptance or approval. The instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the International Civil Aviation Organization, which is hereby designated as the Depositary.

3. Any State which does not ratify, accept or approve this Convention in accordance with paragraph 2 of this Article may accede to it at any time. The instrument of accession shall be deposited with the Depositary.

4. Upon ratifying, accepting, approving or acceding to this Convention, each State Party:

(*a*) shall notify the Depositary of the jurisdiction it has established under its national law in accordance with paragraph 2 of Article 8, and immediately notify the Depositary of any change; and

(*b*) may declare that it shall apply the provisions of subparagraph (d) of paragraph 4 of Article 1 in accordance with the principles of its criminal law concerning family exemptions from liability.

Article 22

1. This Convention shall enter into force on the first day of the second month following the date of the deposit of the twenty-second instrument of ratification, acceptance, approval or accession.

2. For each State ratifying, accepting, approving or acceding to this Convention after the deposit of the twenty-second instrument of ratification, acceptance, approval or accession, this Convention shall enter into force on the first day of the second month following the date of the deposit by such State of its instrument of ratification, acceptance, approval or accession.

3. As soon as this Convention enters into force, it shall be registered with the United Nations by the Depositary.

Article 23

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.

Article 24

As between the States Parties, this Convention shall prevail over the following instruments:

(*a*) the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, Signed at Montreal on 23 September 1971; and

(*b*) the Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, Supplementary to the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, Done at Montreal on 23 September 1971, Signed at Montreal on 24 February 1988.

Article 25

The Depositary shall promptly inform all States Parties to this Convention and all signatory or acceding States to this Convention of the date of each signature, the date of deposit of each instrument of ratification, approval, acceptance or accession, the date of coming into force of this Convention, and other relevant information.

In witness whereof the undersigned Plenipotentiaries, having been duly authorized, have signed this Convention.

Done at Beijing on the tenth day of September of the year Two Thousand and Ten 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.

(*b*) Protocol Supplementary to the Convention for the Suppression of Unlawful Seizure of Aircraft. Beijing, 10 September 2010*

The State Parties to this Protocol,

Deeply concerned about the worldwide escalation of unlawful acts against civil aviation;

Recognizing that new types of threats against civil aviation require new concerted efforts and policies of cooperation on the part of States; and

Believing that in order to better address these threats, it is necessary to adopt provisions supplementary to those of the Convention for the Suppression of Unlawful Seizure of Aircraft signed at The Hague on 16 December 1970, to suppress unlawful acts of seizure or exercise of control of aircraft and to improve its effectiveness;

Have agreed as follows:

Article I

This Protocol supplements the Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on 16 December 1970 (hereinafter referred to as "the Convention").

Article II

Article 1 of the Convention shall be replaced by the following:

"*Article 1*

1. Any person commits an offence if that person unlawfully and intentionally seizes or exercises control of an aircraft in service by force or threat thereof, or by coercion, or by any other form of intimidation, or by any technological means.

2. Any person also commits an offence if that person:

(*a*) makes a threat to commit the offence set forth in paragraph 1 of this Article; or

(*b*) unlawfully and intentionally causes any person to receive such a threat, under circumstances which indicate that the threat is credible.

* Adopted at the International Conference on Air Law (Diplomatic Conference on Aviation Security), held under the auspices of the International Civil Aviation Organization in Beijing, China, from 30 August to 10 September 2010.

3. Any person also commits an offence if that person:

(*a*) attempts to commit the offence set forth in paragraph 1 of this Article; or

(*b*) organizes or directs others to commit an offence set forth in paragraph 1, 2 or 3 (a) of this Article; or

(*c*) participates as an accomplice in an offence set forth in paragraph 1, 2 or 3 (a) of this Article; or

(*d*) unlawfully and intentionally assists another person to evade investigation, prosecution or punishment, knowing that the person has committed an act that constitutes an offence set forth in paragraph 1, 2, 3 (a), 3 (b) or 3 (c) of this Article, or that the person is wanted for criminal prosecution by law enforcement authorities for such an offence or has been sentenced for such an offence.

4. Each State Party shall also establish as offences, when committed intentionally, whether or not any of the offences set forth in paragraph 1 or 2 of this Article is actually committed or attempted, either or both of the following:

(*a*) agreeing with one or more other persons to commit an offence set forth in paragraph 1 or 2 of this Article and, where required by national law, involving an act undertaken by one of the participants in furtherance of the agreement; or

(*b*) contributing in any other way to the commission of one or more offences set forth in paragraph 1 or 2 of this Article by a group of persons acting with a common purpose, and such contribution shall either:

(i) be made with the aim of furthering the general criminal activity or purpose of the group, where such activity or purpose involves the commission of an offence set forth in paragraph 1 or 2 of this Article; or

(ii) be made in the knowledge of the intention of the group to commit an offence set forth in paragraph 1 or 2 of this Article".

Article III

Article 2 of the Convention shall be replaced by the following:

"*Article 2*

Each State Party undertakes to make the offences set forth in Article 1 punishable by severe penalties".

Article IV

The following shall be added as Article 2 *bis* of the Convention:

"*Article 2* bis

1. Each State Party, in accordance with its national legal principles, may take the necessary measures to enable a legal entity located in its territory or organized under its laws to be held liable when a person responsible for management or control of that legal entity has, in that capacity, committed an offence set forth in Article 1. Such liability may be criminal, civil or administrative.

2. Such liability is incurred without prejudice to the criminal liability of individuals having committed the offences.

3. If a State Party takes the necessary measures to make a legal entity liable in accordance with paragraph 1 of this Article, it shall endeavour to ensure that the applicable criminal, civil or administrative sanctions are effective, proportionate and dissuasive. Such sanctions may include monetary sanctions".

Article V

1. Article 3, paragraph 1, of the Convention shall be replaced by the following:

"*Article 3*

1. For the purposes of this Convention, an aircraft is considered to be in service from the beginning of the pre-flight preparation of the aircraft by ground personnel or by the crew for a specific flight until twenty-four hours after any landing. In the case of a forced landing, the flight shall be deemed to continue until the competent authorities take over the responsibility for the aircraft and for persons and property on board".

2. In Article 3, paragraph 3, of the Convention, "registration" shall be replaced by "registry".

3. In Article 3, paragraph 4, of the Convention, "mentioned" shall be replaced by "set forth".

4. Article 3, paragraph 5, of the Convention shall be replaced by the following:

"5. Notwithstanding paragraphs 3 and 4 of this Article, Articles 6, 7, 7 *bis*, 8, 8 *bis*, 8 *ter* and 10 shall apply whatever the place of take-off or the place of actual landing of the aircraft, if the offender or the alleged offender is found in the territory of a State other than the State of registry of that aircraft".

Article VI

The following shall be added as Article 3 *bis* of the Convention:

"*Article 3* bis

1. Nothing in this Convention shall affect other rights, obligations and responsibilities of States and individuals under international law, in particular the purposes and principles of the Charter of the United Nations, the Convention on International Civil Aviation and international humanitarian law.

2. The activities of armed forces during an armed conflict, as those terms are understood under international humanitarian law, which are governed by that law are not governed by this Convention, and the activities undertaken by military forces of a State in the exercise of their official duties, inasmuch as they are governed by other rules of international law, are not governed by this Convention.

3. The provisions of paragraph 2 of this Article shall not be interpreted as condoning or making lawful otherwise unlawful acts, or precluding prosecution under other laws".

Article VII

Article 4 of the Convention shall be replaced by the following:

"*Article 4*

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in Article 1 and any other act of violence against passengers or crew committed by the alleged offender in connection with the offences, in the following cases:

(*a*) when the offence is committed in the territory of that State;

(*b*) when the offence is committed against or on board an aircraft registered in that State;

(*c*) when the aircraft on board which the offence is committed lands in its territory with the alleged offender still on board;

(*d*) when the offence is committed against or on board an aircraft leased without crew to a lessee whose principal place of business or, if the lessee has no such place of business, whose permanent residence is in that State;

(*e*) when the offence is committed by a national of that State.

2. Each State Party may also establish its jurisdiction over any such offence in the following cases:

(*a*) when the offence is committed against a national of that State;

(*b*) when the offence is committed by a stateless person whose habitual residence is in the territory of that State.

3. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over the offences set forth in Article 1 in the case where the alleged offender is present in its territory and it does not extradite that person pursuant to Article 8 to any of the States Parties that have established their jurisdiction in accordance with the applicable paragraphs of this Article with regard to those offences.

4. This Convention does not exclude any criminal jurisdiction exercised in accordance with national law".

Article VIII

Article 5 of the Convention shall be replaced by the following:

"*Article 5*

The States Parties which establish joint air transport operating organizations or international operating agencies, which operate aircraft which are subject to joint or international registration shall, by appropriate means, designate for each aircraft the State among them which shall exercise the jurisdiction and have the attributes of the State of registry for the purpose of this Convention and shall give notice thereof to the Secretary General of the International Civil Aviation Organization who shall communicate the notice to all States Parties to this Convention".

Article IX

Article 6, paragraph 4, of the Convention shall be replaced by the following:

"*Article 6*

4. When a State Party, pursuant to this Article, has taken a person into custody, it shall immediately notify the States Parties which have established jurisdiction under paragraph 1 of Article 4, and established jurisdiction and notified the Depositary under paragraph 2 of Article 4 and, if it considers it advisable, any other interested States of the fact that such person is in custody and of the circumstances which warrant that person's detention. The State Party which makes the preliminary enquiry contemplated in paragraph 2 of this Article shall promptly report its findings to the said States Parties and shall indicate whether it intends to exercise jurisdiction".

Article X

The following shall be added as Article 7 *bis* of the Convention:

"*Article 7 bis*

Any person who is taken into custody, or regarding whom any other measures are taken or proceedings are being carried out pursuant to this Convention, shall be guaranteed fair treatment, including enjoyment of all rights and guarantees in conformity with the law of the State in the territory of which that person is present and applicable provisions of international law, including international human rights law".

Article XI

Article 8 of the Convention shall be replaced by the following:

"*Article 8*

1. The offences set forth in Article 1 shall be deemed to be included as extraditable offences in any extradition treaty existing between States Parties. States Parties undertake to include the offences as extraditable offences in every extradition treaty to be concluded between them.

2. If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may at its option consider this Convention as the legal basis for extradition in respect of the offences set forth in Article 1. Extradition shall be subject to the other conditions provided by the law of the requested State.

3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize the offences set forth in Article 1 as extraditable offences between themselves subject to the conditions provided by the law of the requested State.

4. Each of the offences shall be treated, for the purpose of extradition between States Parties, as if it had been committed not only in the place in which it occurred but also in the territories of the States Parties required to establish their jurisdiction in accordance with subparagraphs (b), (c), (d) and (e) of paragraph 1 of Article 4 and who have established jurisdiction in accordance with paragraph 2 of Article 4.

5. The offences set forth in subparagraphs (a) and (b) of paragraph 4 of Article 1 shall, for the purpose of extradition between States Parties, be treated as equivalent".

Article XII

The following shall be added as Article 8 *bis* of the Convention:

"*Article 8* bis

None of the offences set forth in Article 1 shall be regarded, for the purposes of extradition or mutual legal assistance, as a political offence or as an offence connected with a political offence or as an offence inspired by political motives. Accordingly, a request for extradition or for mutual legal assistance based on such an offence may not be refused on the sole ground that it concerns a political offence or an offence connected with a political offence or an offence inspired by political motives".

Article XIII

The following shall be added as Article 8 *te*r of the Convention:

"*Article 8* ter

Nothing in this Convention shall be interpreted as imposing an obligation to extradite or to afford mutual legal assistance, if the requested State Party has substantial grounds for believing that the request for extradition for offences set forth in Article 1 or for mutual legal assistance with respect to such offences has been made for the purpose of prosecuting or punishing a person on account of that person's race, religion, nationality, ethnic origin, political opinion or gender, or that compliance with the request would cause prejudice to that person's position for any of these reasons".

Article XIV

Article 9, paragraph 1, of the Convention shall be replaced by the following:

"*Article 9*

1. When any of the acts set forth in paragraph 1 of Article 1 has occurred or is about to occur, States Parties shall take all appropriate measures to restore control of the aircraft to its lawful commander or to preserve the commander's control of the aircraft".

Article XV

Article 10, paragraph 1, of the Convention shall be replaced by the following:

"*Article 10*

1. States Parties shall afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of the offences set forth in Article 1 and other acts set forth in Article 4. The law of the State requested shall apply in all cases".

Article XVI

The following shall be added as Article 10 *bis* of the Convention:

"*Article 10* bis

Any State Party having reason to believe that one of the offences set forth in Article 1 will be committed shall, in accordance with its national law, furnish any relevant information in its possession to those States Parties which it believes would be the States set forth in paragraphs 1 and 2 of Article 4".

Article XVII

1. All references in the Convention to "Contracting State" and "Contracting States" shall be replaced by "State Party" and "States Parties" respectively.

2. All references in the Convention to "him" and "his" shall be replaced by "that person" and "that person's" respectively.

Article XVIII

The texts of the Convention in the Arabic and Chinese languages annexed to this Protocol shall, together with the texts of the Convention in the English, French, Russian and Spanish languages, constitute texts equally authentic in the six languages.

Article XIX

As between the States Parties to this Protocol, the Convention and this Protocol shall be read and interpreted together as one single instrument and shall be known as The Hague Convention as amended by the Beijing Protocol, 2010.

Article XX

This Protocol shall be open for signature in Beijing on 10 September 2010 by States participating in the Diplomatic Conference on Aviation Security held at Beijing from 30 August to 10 September 2010. After 27 September 2010, this Protocol 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 XXIII.

Article XXI

1. This Protocol is subject to ratification, acceptance or approval. The instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the International Civil Aviation Organization, who is hereby designated as the Depositary.

2. Ratification, acceptance or approval of this Protocol by any State which is not a Party to the Convention shall have the effect of ratification, acceptance or approval of The Hague Convention as amended by the Beijing Protocol, 2010.

3. Any State which does not ratify, accept or approve this Protocol in accordance with paragraph 1 of this Article may accede to it at any time. The instruments of accession shall be deposited with the Depositary.

Article XXII

Upon ratifying, accepting, approving or acceding to this Protocol, each State Party:

(*a*) shall notify the Depositary of the jurisdiction it has established under its national law in accordance with paragraph 2 of Article 4 of The Hague Convention as amended by the Beijing Protocol, 2010, and immediately notify the Depositary of any change; and

(*b*) may declare that it shall apply the provisions of subparagraph (d) of paragraph 3 of Article 1 of The Hague Convention as amended by the Beijing Protocol, 2010 in accordance with the principles of its criminal law concerning family exemptions from liability.

Article XXIII

1. This Protocol shall enter into force on the first day of the second month following the date of the deposit of the twenty-second instrument of ratification, acceptance, approval or accession with the Depositary.

2. For each State ratifying, accepting, approving or acceding to this Protocol after the deposit of the twenty-second instrument of ratification, acceptance, approval or accession, this Protocol shall enter into force on the first day of the second month following the date of the deposit by such State of its instrument of ratification, acceptance, approval or accession.

3. As soon as this Protocol enters into force, it shall be registered with the United Nations by the Depositary.

Article XXIV

1. Any State Party may denounce this Protocol by written notification to the Depositary.

2. Denunciation shall take effect one year following the date on which notification is received by the Depositary.

Article XXV

The Depositary shall promptly inform all States Parties to this Protocol and all signatory or acceding States to this Protocol of the date of each signature, the date of deposit of each instrument of ratification, acceptance, approval or accession, the date of coming into force of this Protocol, and other relevant information.

In witness whereof the undersigned Plenipotentiaries, having been duly authorized, have signed this Protocol.

Done at Beijing on the tenth day of September of the year Two Thousand and Ten 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 Protocol 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 Protocol.

2. International Criminal Court

(*a*) Resolution RC/Res.5. Amendments to article 8 of the Rome Statute*

The Review Conference,

Noting article 123, paragraph 1, of the Rome Statute of the International Criminal Court which requests the Secretary-General of the United Nations to convene a Review Conference to consider any amendments to the Statute seven years after its entry into force,

Noting article 121, paragraph 5, of the Statute which states that any amendment to articles 5, 6, 7 and 8 of the Statute shall enter into force for those States Parties which have accepted the amendment one year after the deposit of their instruments of ratification or acceptance and that in respect of a State Party which has not accepted the amendment, the Court shall not exercise its jurisdiction regarding the crime covered by the amendment when committed by that State Party's nationals or on its territory, and *confirming* its understanding that in respect to this amendment the same principle that applies in respect of a State Party which has not accepted the amendment applies also in respect of States that are not parties to the Statute,

Confirming that, in light of the provision of article 40, paragraph 5, of the Vienna Convention on the Law of Treaties, States that subsequently become States Parties to the Statute will be allowed to decide whether to accept the amendment contained in this resolution at the time of ratification, acceptance or approval of, or accession to the Statute,

Noting article 9 of the Statute on the Elements of Crimes which states that such Elements shall assist the Court in the interpretation and application of the provisions of the crimes within its jurisdiction,

Taking due account of the fact that the crimes of employing poison or poisoned weapons; of employing asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices; and of employing bullets which expand or flatten easily in the human body, such as bullets with a hard envelope which does not entirely cover the core or is pierced with incisions, already fall within the jurisdiction of the Court under article 8, paragraph 2 (b), as serious violations of the laws and customs applicable in international armed conflict,

Noting the relevant elements of the crimes within the Elements of Crimes already adopted by the Assembly of States Parties on 9 September 2000,

Considering that the abovementioned relevant elements of the crimes can also help in their interpretation and application in armed conflict not of an international character, in that *inter alia* they specify that the conduct took place in the context of and was associated with an armed conflict, which consequently confirm the exclusion from the Court's jurisdiction of law enforcement situations,

Considering that the crimes referred to in article 8, paragraph 2 (e) (xiii) (employing poison or poisoned weapons) and in article 8, paragraph 2 (e) (xiv) (asphyxiating, poisonous or other gases, and all analogous liquids, materials and devices) are serious violations

* Adopted by consensus on 10 June 2010 at the 12th plenary meeting of the Review Conference of the Rome Statute of the International Criminal Court in Kampala, Uganda. See Depositary Notification C.N.533.2010 Treaties-6, dated 29 November 2010, available from http://treaties.un.org.

of the laws and customs applicable in armed conflict not of an international character, as reflected in customary international law,

Considering that the crime referred to in article 8, paragraph 2 (e) (xv) (employing bullets which expand or flatten easily in the human body), is also a serious violation of the laws and customs applicable in armed conflict not of an international character, and *understanding* that the crime is committed only if the perpetrator employs the bullets to uselessly aggravate suffering or the wounding effect upon the target of such bullets, as reflected in customary international law,

1. *Decides* to adopt the amendment to article 8, paragraph 2 (e), of the Rome Statute of the International Criminal Court contained in annex I to the present resolution, which is subject to ratification or acceptance and shall enter into force in accordance with article 121, paragraph 5, of the Statute;

2. *Decides* to adopt the relevant elements to be added to the Elements of Crimes, as contained in annex II to the present resolution.

Annex I Amendment to article 8

Add to article 8, paragraph 2 (e), the following:

"(xiii) Employing poison or poisoned weapons;

(xiv) Employing asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices;

(xv) Employing bullets which expand or flatten easily in the human body, such as bullets with a hard envelope which does not entirely cover the core or is pierced with incisions".

Annex II Elements of crimes

Add the following elements to the Elements of Crimes:

Article 8(2)(e)(xiii). War crime of employing poison or poisoned weapons

Elements

1. The perpetrator employed a substance or a weapon that releases a substance as a result of its employment.

2. The substance was such that it causes death or serious damage to health in the ordinary course of events, through its toxic properties.

3. The conduct took place in the context of and was associated with an armed conflict not of an international character.

4. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

Article 8(2)(e)(xiv) War crime of employing prohibited gases, liquids, materials or devices

Elements

1. The perpetrator employed a gas or other analogous substance or device.

2. The gas, substance or device was such that it causes death or serious damage to health in the ordinary course of events, through its asphyxiating or toxic properties.*

3. The conduct took place in the context of and was associated with an armed conflict not of an international character.

4. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

Article 8(2)(e)(xv) War crime of employing prohibited bullets

Elements

1. The perpetrator employed certain bullets.

2. The bullets were such that their use violates the international law of armed conflict because they expand or flatten easily in the human body.

3. The perpetrator was aware that the nature of the bullets was such that their employment would uselessly aggravate suffering or the wounding effect.

4. The conduct took place in the context of and was associated with an armed conflict not of an international character.

5. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

(*b*) Resolution RC/Res.6. The crime of aggression**

The Review Conference,

Recalling paragraph 1 of article 12 of the Rome Statute,

Recalling paragraph 2 of article 5 of the Rome Statute,

Recalling also paragraph 7 of resolution F, adopted by the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court on 17 July 1998,

Recalling further resolution ICC-ASP/1/Res.1 on the continuity of work in respect of the crime of aggression, and expressing its appreciation to the Special Working Group on the Crime of Aggression for having elaborated proposals on a provision on the crime of aggression,

Taking note of resolution ICC-ASP/8/Res.6, by which the Assembly of States Parties forwarded proposals on a provision on the crime of aggression to the Review Conference for its consideration,

Resolved to activate the Court's jurisdiction over the crime of aggression as early as possible,

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* Nothing in this element shall be interpreted as limiting or prejudicing in any way existing or developing rules of international law with respect to the development, production, stockpiling and use of chemical weapons.

** Adopted by consensus on 11 June 2010 at the 13th plenary meeting of the Review Conference of the Rome Statute of the International Criminal Court in Kampala, Uganda. See Depositary Notification C.N.651.2010 Treaties-8, dated 29 November 2010, available at http://treaties.un.org.

1. *Decides* to adopt, in accordance with article 5, paragraph 2, of the Rome Statute of the International Criminal Court (hereinafter: "the Statute") the amendments to the Statute contained in annex I of the present resolution, which are subject to ratification or acceptance and shall enter into force in accordance with article 121, paragraph 5; and notes that any State Party may lodge a declaration referred to in article 15 bis prior to ratification or acceptance;

2. *Also decides* to adopt the amendments to the Elements of Crimes contained in annex II of the present resolution;

3. *Also decides* to adopt the understandings regarding the interpretation of the abovementioned amendments contained in annex III of the present resolution;

4. *Further decides* to review the amendments on the crime of aggression seven years after the beginning of the Court's exercise of jurisdiction;

5. *Calls upon* all States Parties to ratify or accept the amendments contained in annex I.

Annex I. Amendments to the Rome Statute of the International Criminal Court on the crime of aggression

1. Article 5, paragraph 2, of the Statute is deleted.

2. The following text is inserted after article 8 of the Statute:

Article 8 bis. *Crime of aggression*

1. For the purpose of this Statute, "crime of aggression" means the planning, preparation, initiation or execution, by a person in a position effectively to exercise control over or to direct the political or military action of a State, of an act of aggression which, by its character, gravity and scale, constitutes a manifest violation of the Charter of the United Nations.

2. For the purpose of paragraph 1, "act of aggression" means the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations. Any of the following acts, regardless of a declaration of war, shall, in accordance with United Nations General Assembly resolution 3314 (XXIX) of 14 December 1974, qualify as an act of aggression:

(*a*) The invasion or attack by the armed forces of a State of the territory of another State, or any military occupation, however temporary, resulting from such invasion or attack, or any annexation by the use of force of the territory of another State or part thereof;

(*b*) Bombardment by the armed forces of a State against the territory of another State or the use of any weapons by a State against the territory of another State;

(*c*) The blockade of the ports or coasts of a State by the armed forces of another State;

(*d*) An attack by the armed forces of a State on the land, sea or air forces, or marine and air fleets of another State;

(*e*) The use of armed forces of one State which are within the territory of another State with the agreement of the receiving State, in contravention of the conditions provided for in the agreement or any extension of their presence in such territory beyond the termination of the agreement;

(*f*) The action of a State in allowing its territory, which it has placed at the disposal of another State, to be used by that other State for perpetrating an act of aggression against a third State;

(*g*) The sending by or on behalf of a State of armed bands, groups, irregulars or mercenaries, which carry out acts of armed force against another State of such gravity as to amount to the acts listed above, or its substantial involvement therein.

3. The following text is inserted after article 15 of the Statute:

Article 15 bis. *Exercise of jurisdiction over the crime of aggression (State referral,* proprio motu*)*

1. The Court may exercise jurisdiction over the crime of aggression in accordance with article 13, paragraphs (a) and (c), subject to the provisions of this article.

2. The Court may exercise jurisdiction only with respect to crimes of aggression committed one year after the ratification or acceptance of the amendments by thirty States Parties.

3. The Court shall exercise jurisdiction over the crime of aggression in accordance with this article, subject to a decision to be taken after 1 January 2017 by the same majority of States Parties as is required for the adoption of an amendment to the Statute.

4. The Court may, in accordance with article 12, exercise jurisdiction over a crime of aggression, arising from an act of aggression committed by a State Party, unless that State Party has previously declared that it does not accept such jurisdiction by lodging a declaration with the Registrar. The withdrawal of such a declaration may be effected at any time and shall be considered by the State Party within three years.

5. In respect of a State that is not a party to this Statute, the Court shall not exercise its jurisdiction over the crime of aggression when committed by that State's nationals or on its territory.

6. Where the Prosecutor concludes that there is a reasonable basis to proceed with an investigation in respect of a crime of aggression, he or she shall first ascertain whether the Security Council has made a determination of an act of aggression committed by the State concerned. The Prosecutor shall notify the Secretary-General of the United Nations of the situation before the Court, including any relevant information and documents.

7. Where the Security Council has made such a determination, the Prosecutor may proceed with the investigation in respect of a crime of aggression.

8. Where no such determination is made within six months after the date of notification, the Prosecutor may proceed with the investigation in respect of a crime of aggression, provided that the Pre-Trial Division has authorized the commencement of the investigation in respect of a crime of aggression in accordance with the procedure contained in article 15, and the Security Council has not decided otherwise in accordance with article 16.

9. A determination of an act of aggression by an organ outside the Court shall be without prejudice to the Court's own findings under this Statute.

10. This article is without prejudice to the provisions relating to the exercise of jurisdiction with respect to other crimes referred to in article 5.

4. The following text is inserted after article 15 *bis* of the Statute:

Article 15 ter. *Exercise of jurisdiction over the crime of aggression (Security Council referral)*

1. The Court may exercise jurisdiction over the crime of aggression in accordance with article 13, paragraph (b), subject to the provisions of this article.

2. The Court may exercise jurisdiction only with respect to crimes of aggression committed one year after the ratification or acceptance of the amendments by thirty States Parties.

3. The Court shall exercise jurisdiction over the crime of aggression in accordance with this article, subject to a decision to be taken after 1 January 2017 by the same majority of States Parties as is required for the adoption of an amendment to the Statute.

4. A determination of an act of aggression by an organ outside the Court shall be without prejudice to the Court's own findings under this Statute.

5. This article is without prejudice to the provisions relating to the exercise of jurisdiction with respect to other crimes referred to in article 5.

5. The following text is inserted after article 25, paragraph 3, of the Statute:

3 *bis*. In respect of the crime of aggression, the provisions of this article shall apply only to persons in a position effectively to exercise control over or to direct the political or military action of a State.

6. The first sentence of article 9, paragraph 1, of the Statute is replaced by the following sentence:

1. Elements of Crimes shall assist the Court in the interpretation and application of articles 6, 7, 8 and 8 *bis*.

7. The chapeau of article 20, paragraph 3, of the Statute is replaced by the following paragraph; the rest of the paragraph remains unchanged:

3. No person who has been tried by another court for conduct also proscribed under article 6, 7, 8 or 8 bis shall be tried by the Court with respect to the same conduct unless the proceedings in the other court:

Annex II. Amendments to the elements of crimes

Article 8 bis. *Crime of aggression*

Introduction

1. It is understood that any of the acts referred to in article 8 *bis*, paragraph 2, qualify as an act of aggression.

2. There is no requirement to prove that the perpetrator has made a legal evaluation as to whether the use of armed force was inconsistent with the Charter of the United Nations.

3. The term "manifest" is an objective qualification.

4. There is no requirement to prove that the perpetrator has made a legal evaluation as to the "manifest" nature of the violation of the Charter of the United Nations.

Elements

1. The perpetrator planned, prepared, initiated or executed an act of aggression.

2. The perpetrator was a person* in a position effectively to exercise control over or to direct the political or military action of the State which committed the act of aggression.

3. The act of aggression—the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations—was committed.

4. The perpetrator was aware of the factual circumstances that established that such a use of armed force was inconsistent with the Charter of the United Nations.

5. The act of aggression, by its character, gravity and scale, constituted a manifest violation of the Charter of the United Nations.

6. The perpetrator was aware of the factual circumstances that established such a manifest violation of the Charter of the United Nations.

Annex III. Understandings regarding the amendments to the Rome Statute of the International Criminal Court on the crime of aggression

Referrals by the Security Council

1. It is understood that the Court may exercise jurisdiction on the basis of a Security Council referral in accordance with article 13, paragraph (b), of the Statute only with respect to crimes of aggression committed after a decision in accordance with article 15 *ter*, paragraph 3, is taken, and one year after the ratification or acceptance of the amendments by thirty States Parties, whichever is later.

2. It is understood that the Court shall exercise jurisdiction over the crime of aggression on the basis of a Security Council referral in accordance with article 13, paragraph (b), of the Statute irrespective of whether the State concerned has accepted the Court's jurisdiction in this regard.

Jurisdiction *ratione temporis*

3. It is understood that in case of article 13, paragraph (a) or (c), the Court may exercise its jurisdiction only with respect to crimes of aggression committed after a decision in accordance with article 15 *bis*, paragraph 3, is taken, and one year after the ratification or acceptance of the amendments by thirty States Parties, whichever is later.

Domestic jurisdiction over the crime of aggression

4. It is understood that the amendments that address the definition of the act of aggression and the crime of aggression do so for the purpose of this Statute only. The amendments shall, in accordance with article 10 of the Rome Statute, not be interpreted as limiting or prejudicing in any way existing or developing rules of international law for purposes other than this Statute.

5. It is understood that the amendments shall not be interpreted as creating the right or obligation to exercise domestic jurisdiction with respect to an act of aggression committed by another State.

Other understandings

* With respect to an act of aggression, more than one person may be in a position that meets these criteria.

6. It is understood that aggression is the most serious and dangerous form of the illegal use of force; and that a determination whether an act of aggression has been committed requires consideration of all the circumstances of each particular case, including the gravity of the acts concerned and their consequences, in accordance with the Charter of the United Nations.

7. It is understood that in establishing whether an act of aggression constitutes a manifest violation of the Charter of the United Nations, the three components of character, gravity and scale must be sufficient to justify a "manifest" determination. No one component can be significant enough to satisfy the manifest standard by itself.

Chapter V

DECISIONS OF THE ADMINISTRATIVE TRIBUNALS OF THE UNITED NATIONS AND RELATED INTERGOVERNMENTAL ORGANIZATIONS[1]

A. 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, the United Nations Dispute Tribunal and an appellate instance, the 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

[1] In view of the large number of judgments which were rendered in 2010 by the administrative tribunals of the United Nations and related intergovernmental organizations, only those judgments 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 judgments rendered by the tribunals, namely, Judgments Nos. UNDT/2010/1 to UNDT/2010/218 of the United Nations Dispute Tribunal, Judgments Nos. UNAT/2010/1 to UNAT/2010/100 of the United Nations Appeals Tribunal, Judgments Nos. 2862 to 2953 of the Administrative Tribunal of the International Labour Organization, Decisions Nos. 427 to 446 of the World Bank Administrative Tribunal, and Judgment Nos. 2010–1 to 2010–4 of the International Monetary Fund Administrative Tribunal, see, respectively, documents UNDT/2010/1 to UNDT/2010/218; UNAT/2010/1 to UNAT/2010/100 ; *Judgments of the Administrative Tribunal of the International Labour Organization: 108th and 109th Sessions; World Bank Administrative Tribunal Reports, 2010; and International Monetary Fund Administrative Tribunal Reports, Judgment No. 2010–1 to 2010–4.*

committees and the disciplinary committees of the separately administered funds and programmes.

By resolution 64/119 of 6 December 2009, the General Assembly approved the rules of procedure of the United Nations Dispute Tribunal and the United Nations Appeals Tribunal, as established by the respective Tribunals on 26 June 2009.

In 2010, the United Nations Dispute Tribunal in New York, Geneva and Nairobi issued a total of 218 judgments. A selection of 11 judgments is printed below.

1. *Judgment No. UNDT/2010/019 (29 January 2010): Samardzic* et al. v. *Secretary-General of the United Nations*[2]

Binding nature of time limits for contesting administrative decisions—Exceptions to the prescribed time limits—"Exceptional cases" foreseen in article 8.3 of the United Nations Dispute Tribunal (UNDT) Statute—Personal circumstances—Ignorance of the time limits

The Applicants entered the service of the United Nations between May 1992 and July 2002, as local staff members in various parts of the former Yugoslavia. The Applicants held fixed-term appointments, which were continuously renewed for periods ranging from three months to one year. Each time their appointments were extended, they signed new letters of appointment, which specified their acceptance to the conditions laid down in the Staff Regulations and in the Staff Rules. By letters dated 8 April 2009, the Applicants were informed that the Secretary-General had decided to terminate, with effect from 10 April 2009, their fixed-term term appointments, which were due to expire on 30 April 2009, in accordance with staff regulation 9.1.

The Applicants sent a joint request for administrative review dated 21 July 2009 to the Assistant Secretary-General for Human Resources Management and a request for management evaluation dated 15 September 2009 to the Secretary-General. By letter dated 6 November 2009, the Management Evaluation Unit of the United Nations Secretariat informed the Applicants that their requests were not receivable because the time limit for their filing had expired. On 29 November 2009, the Applicants filed an application before the Tribunal, to appeal the decision dated 8 April 2009 to terminate their fixed-term term appointments.

The Applicants contended that they had not been aware of the time limits for requesting administrative review of the contested decision and that they had never received any termination notice telling them that they had two months to appeal from the date of the receipt. The Respondent moved the Tribunal to make a "preliminary determination" into the issue of receivability of the applications.

On 14 January 2010, the Tribunal determined that summary judgment was appropriate since the crucial question in this case, whether the applications were time-barred, was not a matter of fact but a matter of law. In its judgment on the merits, the Tribunal explained that time limits for contesting administrative decisions are well known and widespread instruments imposed by the legislator in order to ensure the stability of a legal situation resulting from an administrative decision. This concern for stability explained

[2] Judge Thomas Laker (Geneva).

why, in administrative law, time limits for contesting such decision are, on the one hand, fairly short and, on the other hand, applied with rigour. The Tribunal observed that the time limits in the United Nations justice system are neither unique nor exceptionally restrictive. Sixty calendar days to request administrative review and 90 calendar days to file an appeal before the Tribunal remained within a reasonable frame. With regard to the contested decisions dated 8 April 2009, the Tribunal noted that the two-month time limit specified in staff rule 11.2 (a) had ended in June 2009.

The Tribunal then noted that, pursuant to the article 8, paragraph 3, of the United Nations Dispute Tribunal (UNDT) Statute, the Tribunal may suspend or waive the deadlines to file an application only in "exceptional cases", which, as specified in article 7, paragraph 5, of the rules of procedure of the Tribunal, are justified by "exceptional circumstances". The Tribunal observed that exceptions to the prescribed time limits must be related to the individual conditions and circumstances of the person seeking legal remedy, not to the characteristics of the applications. Factors like the prospects of success on the merits and the importance of the case were extraneous to the requirement to submit an application within the prescribed time limits. As the former United Nations Administrative Tribunal had argued in Judgement No. 372, *Kayigamba* (1986), Judgement No. 913, *Midaya* (1999) and Judgement No. 1054, *Obuyu* (2002), exceptional cases arise from exceptional personal circumstances, which are those circumstances "beyond the control of the Appellant". The Tribunal further specified that since it was the Applicant's interest to obtain a suspension, waiver or extension of time limits, the burden of proof to show "exceptional circumstances" was on the Applicant.

In the present case, the Tribunal found that the Applicants' ignorance of the time limits did not constitute an "exceptional circumstance". It found that the Applicants, by signing their letters of appointment, had certified that they had been made acquainted with the Staff Regulations and Rules and, in addition, that a copy of the Regulations and Rules had been transmitted to them with the letter of appointment.

For these reasons, the Tribunal rejected the applications.

2. *Judgment No. UNDT/2010/044 (19 March 2010): D'Hooge* v. *Secretary-General of the United Nations*[3]

Termination of contract—Special leave with full pay—Due process in preliminary investigations and administrative review—Good faith and fair dealing—Misrepresentation of facts does not render an employment contract void—The Organization can only end an employment contract through the procedures for termination and dismissal—Delegation—Authority to terminate a contract resides solely with the Secretary-General—"Highest standards of integrity" and "efficiency" inadequate test for termination—Relationship between misconduct procedures and termination—Misconduct involves moral turpitude and requires application of provisions on disciplinary measures

In August 2005, the Applicant applied for a vacancy in the Department of Safety and Security (DSS) through the United Nations Galaxy system. His personal history profile (PHP) did not mention that the Applicant had served at the International Criminal Tribu-

[3] Judge Adams (New York).

nal for the former Yugoslavia (ICTY) from September 1995 to November 1997, where he had been reprimanded in writing for "insubordination" and a "serious error of judgment". Additionally the University Degree window of the PHP contained a reference to the Applicant's Police Diploma, which was not, in fact, a university degree.

The Applicant was selected for the post and entered service on 7 January 2007. His letter of appointment specified that the appointment was offered on the basis of his certification of the accuracy of the information provided by him on the PHP. On 6 September 2007, the Office of the Under-Secretary-General, DSS (USG/DSS), received an anonymous letter alleging that the Applicant had misrepresented his education qualifications and his prior employment history when applying for a position in DSS. Subsequently, the USG/DSS directed the Internal Affairs Unit (IAU) of DSS to conduct a preliminary investigation. On 14 September 2007, the Applicant was notified in writing by the Officer-in-Charge (OIC) of the Office of Human Resources Management (OHRM) that he was being placed on special leave with full pay pending the outcome of the investigation. The IAU interviewed the Applicant in October 2007 and January 2008 and submitted its report on 20 February 2008. On 28 April 2008, the Applicant's employment was terminated on the authority of the Assistant Secretary-General, OHRM (ASG/ORHM), based on articles 9.1(b) and 9.1(a) (ii) of the Staff Regulations then in effect, which specified that the Secretary-General could terminate the appointment of a staff member "[i]f facts anterior to the appointment of the staff member . . . had [they] been known at the time of his or her appointment, should . . . have precluded his or her appointment".

On 14 May 2008, the Applicant requested an administrative review of the decision to terminate his appointment. Despite several requests, the Applicant was not given a copy of the investigation report until after the decision to terminate the Applicant was confirmed by letter from OHRM dated 21 June 2008. Subsequently, the Applicant filed his case with the Tribunal, arguing that his due process rights had been violated and that the ASG/OHRM did not have the delegated authority to terminate his appointment or to place him on special leave, but that such authority was solely with the Secretary-General.

In considering the due process rights of the Applicant, the Tribunal noted that the right to due process and the corresponding obligation of the Administration are based upon the contractual requirements of good faith and fair dealing. When allegations are made against a staff member, due administration requires that any resulting decision must be based upon an adequate inquiry. According to the Tribunal, this involves seeking information from the staff member both as to the allegations and the findings or recommendations affecting him or her. In the present case, the Tribunal found that Applicant's due process rights had been disregarded during the preliminary investigation and in the administrative review. The Applicant should have been provided with an opportunity to respond to any adverse findings of fact and recommendations, before the decision to terminate his appointment was made. Without the report, the Applicant was at an insuperable and unfair disadvantage in his ability to criticize its findings and justify his claim for review. Consequently, the Tribunal found that the Administration had failed to undertake a genuine review in accordance with the requirements of former rule 111.2(a) and with the obligations of good faith towards the Applicant. Furthermore, the Tribunal found that the Administration had failed to apply the facts alleged in the notification of termination to the grounds for termination specified in regulation 9.1.

With regard to the termination, the Secretary-General argued that where a staff member procured an appointment by misrepresentation, the appointment would be considered void from the outset and could be cancelled independent of a termination pursuant to staff regulation 9.1(b). The Tribunal rejected this argument. It noted, primarily relying on common law principles but not excluding the relevance of civil law notions, that misrepresentations as to material fact would almost invariably render the contract voidable but not void, especially, as in the present case, where the contract had been partly performed in accordance with its terms and the parties could not be returned to their original positions. The Tribunal did not accept the allegation by the Secretary-General that the misrepresentations were fraudulent and that the Applicant had deliberately concealed matters that he knew to be relevant for the purpose of obtaining the appointment. Accordingly, the Tribunal determined that the making of misrepresentations did not permit the Respondent to depart from the established procedures of termination and dismissal. The Tribunal concluded that the regulations and rules of the Organization did not leave open the possibility of ending a contract otherwise than under regulation 9.1, save by dismissal for misconduct pursuant to disciplinary proceedings.

In assessing the test for termination, the Tribunal observed the requirement that staff meet the highest standards of integrity and efficiency, as stated by the Article 101(3) of the Charter of the United Nations, was lacking in utility and could be impossible to applied meaningfully. In the present case, the Tribunal found no information as to how matters identified reflected on the Applicant's integrity, since no dishonesty was alleged or implied.

As to the authority to terminate the Applicant's contract, the Tribunal noted (and the Respondent later conceded) that the authority to terminate the Applicant's contract resided solely in the Secretary-General. The Tribunal highlighted that if a decision was made pursuant to a delegation, the decision-maker must state that it was so made and identify the person who gave the delegation. It emphasized that a decision that was made by a person authorized by the Staff Rules and Regulations, who was not the Secretary-General, was not made by the Secretary-General. Similarly, the Tribunal found that the decision to place the Applicant on special leave had not been made by the Secretary-General, in violation of staff rule 105.2.

The Tribunal then turned to analyze the relationship between misconduct proceedings and termination. It noted that in cases of misconduct, namely acts involving moral turpitude, disciplinary measures under chapter X had to be taken, rather than the termination procedures under regulation 9.1. However, the Tribunal questioned whether, in cases where the conduct relied on to terminate under regulation 9.1 also constituted misconduct, it was necessary to proceed under chapter X of the Staff Rules relating to disciplinary measures, which provided more safeguards to staff members than regulation 9.1. In the circumstances of the case, the Tribunal found no need to decide this point. It noted that ASG's decision not to proceed with the disciplinary process supported the conclusion that the termination here could not be legally justified on the grounds amounting to misconduct.

For these reasons, the Tribunal concluded that the Respondent failed to comply with the requirements of staff regulation 9.1 when terminating the Applicant's appointment, which was unlawful and in breach of his contract of employment. The placement of the

Applicant on special leave was also unlawful. The parties were ordered to file additional submissions on the scope of the compensation hearing.

3. *Judgment No. 052/2010 (31 March 2010): Lutta* v. *Secretary-General of the United Nations*[4]

Disciplinary measure—Initiation of disciplinary proceedings—Standard of evidence to satisfy that a report of misconduct is well founded—Reasonable suspicion standard—International norms of fairness in investigations—International standards determining "sobriety status"

On 11 November 2007, the Applicant had been involved in a major traffic accident in Abidjan, Côte d'Ivoire, while driving an official United Nations vehicle. The Special Investigation Unit (SIU) of the United Nations Operations in Côte d'Ivoire (UNOCI) conducted an investigation into this incident. In its report of 19 November 2007, SIU concluded that the Applicant had been operating the United Nations vehicle while under the influence of alcohol. The Applicant held that, as a diabetic, he was not drunk, but rather in shock.

On 29 November 2007, the Applicant's driving permit and privileges were suspended. Additionally, the Mission Administration deducted US$939.49 from his Mission Subsistence Allowance (MSA) for the damages caused to the United Nations vehicle. The Office of Human Resources Management (OHRM) decided to file charges against the Applicant and referred the case to a Joint Disciplinary Committee (JDC) for advice as to what disciplinary measures, if any, should be taken in connection with the case. On 16 June 2009, the JDC concluded there was no adequate evidence that the Applicant had been driving under the influence of alcohol and recommended that all charges against the Applicant be dropped. On 24 June 2009, the Secretary-General accepted the JDC's recommendation and decided not to take further action with respect to this matter.

On 24 September 2009 the Applicant filed an application with the Tribunal requesting (i) reimbursement of the amount deducted from his MSA; (ii) compensation for transportation allowance since he had been wrongfully deprived of the use of a United Nations vehicle and (iii) compensation for the impediment to his career advancement, as well as moral and professional damage.

The Tribunal first considered the process of initiating disciplinary proceedings. It noted that it is the responsibility of a head of office or a responsible officer to initiate a preliminary investigation where there is reason to believe that a staff member has engaged in unsatisfactory conduct. If the investigation appears to indicate that the report of misconduct is "well founded", the matter should be immediately reported to Assistant Secretary-General, OHRM (ASG/OHRM). The ASG/OHRM must then decide whether the matter should be pursued on the basis of the evidence presented. The Tribunal observed that the relevant officers and the ASG/OHRM are vested with a wide discretion that should be exercised judiciously. According to the Tribunal, they should apply a "reasonable suspicion standard", in line with the finding of the European Court of Human Rights that "having

[4] Judge Vinod Boolell (Nairobi).

reasonable suspicion presupposes the existence of facts or information which would satisfy an objective observer that the person concerned may have committed the offence".[5]

The Tribunal then moved to analyze what the Respondent referred to as "internationally accepted standards for law enforcement agents to determine sobriety status". The Respondent had filed the Standard Operating Procedures of SIU (SOPs), which had been used by the investigators at the time of the preparation of the report as the basis for determining and/or observing indicia of alcohol. The Tribunal noted that pursuant to the SOPs, in cases of driving under the influence of alcohol a breath test and a blood test were to be carried out. In the Tribunal's view, in addition to a breathalyzer test, other tests such as a blood analysis test, urine analysis and overall behaviour could be utilized, provided that in the latter case those behaviours tested complied with international standards. In the present case, no doctor was called to examine the Applicant on his drunken condition, contrary to well-established practice of the United Nations. The Tribunal further noted that since the Applicant was under shock and was diabetic, it would have been appropriate to test his behaviour in the light of that health condition. Furthermore, the Tribunal observed that a smell of alcohol by itself cannot establish in an irrefutable way that a person is under the influence of alcohol. Finally, the Tribunal noted with concern that the investigators had allowed the Applicant to drive to the police station in spite of his alleged drunken condition. By their actions, the investigators acted in blatant breach of the SOPs and undermined their own impression that the Applicant was drunk.

For these reasons, the Tribunal determined that the Respondent failed to comply with the international standards for determining sobriety status. Further, the Tribunal found that the SIU investigation did not meet any of the well-recognized international norms of fairness in investigations, which require the gathering of all relevant facts whether incriminating or exculpatory. Finally, the Tribunal held that the Applicant was not responsible for causing the accident and that the disciplinary measures imposed were, therefore, unjustified and disproportionate.

The parties were directed to provide written submissions as to the appropriate relief that should be ordered.

4. *Judgment No. 057/2010 (7 April 2010): Ianelli* v. *Secretary-General of the United Nations*[6]

Claim for assignment and relocation expenses—Right to assignment and relocation grant depends on whether staff member is locally or internationally recruited and whether he is settled in the duty station—Different entitlements for contracts for less than a year

The Applicant was employed by the United Nations Office for Project Services (UNOPS) Middle East Office (MEO), in Dubai, as Head of Operations from October 2004, initially on the terms of a Special Services Agreement (SSA) and later on a Consultancy Agreement (CA). On 23 November 2007, the Applicant commenced a 100 series fixed-term appointment at the same duty station. His letter of appointment stated Dubai as the place

[5] *Fox, Campbell and Hartley* v. *United Kingdom, (1990) European Human Rights Reports*, vol. 13, p. 157, para. 32.

[6] Judge Nkemdilim Izuako (Nairobi).

of recruitment and Rome, Italy, as permanent residential address and as the place of home leave. According to UNOPS, the Applicant was not eligible to the assignment grant and other entitlements afforded to internationally recruited staff members under the former 100-series of the Staff Rules, based on his settled nature in the country of the post. Further, UNOPS stated that, since he was recruited from Dubai, the Applicant would not have been eligible for the entitlements if he had travelled back to his place of permanent residence, and from there back to Dubai, following the conclusion of his CA.

On 15 September 2008, the Applicant contested the UNOPS decision before the Joint Appeals Board (JAB). On 1 July 2009, his appeal was transferred to the Tribunal. The Applicant argued that he was entitled to the assignment and relocations grants afforded to internationally recruited staff. In reply, the Respondent submitted that the Applicant had been locally recruited and that he had "settled" at the duty station, since he had been living and working there since 2004.

In considering the assignment grant, the Tribunal noted that, in line with the provisions of administrative instruction ST/AI/2000/17 and staff rule 107.20, this entitlement ordinarily envisaged movement from one place to another, but may also be paid where no travel had been undertaken. In the Tribunal's view, only a resident national of the country in which the duty station is located, or a permanent resident of that country, can rightly be assumed to have established a household there and is thus not entitled to the grant.

Regarding the relocation grant, the Tribunal explained that such grant was designed to enable or assist a staff member to bear costs associated with the relocation of personal effects and household goods. It pointed out that the use of this grant is left entirely up to the discretion of the staff member, and the Organization required no proof on how the grant was utilized.

As to the question of who is entitled to these grants, the Tribunal first examined the definition of an "internationally recruited" staff member in accordance with the provision of staff rules 104.6, 104.7 and appendix B of the Staff Rules. In the Tribunal's view, one is appropriately considered internationally recruited unless one has taken up permanent residence status in the country of the duty station. The Tribunal observed that contracts for less than a year carried a different set of entitlements. However, it highlighted that when a staff member is recruited for a period of less than a year and the appointment is subsequently extended to one year or more at the same duty station, the staff member should receive the balance of what would have been paid had the initial appointment been for one year or longer.

Contrary to the Respondent's contention, the Tribunal found that the concept of being "settled" did not depend on how long a staff member had been in the country of his or her duty station. In the present case, the Tribunal noted that in spite of the fact that the Applicant had been in Dubai for a cumulative period of three years at the time of his appointment, it did not necessarily follow that he must have had a household there.

The Tribunal found that the Applicant satisfied the criteria for being internationally recruited and that he was therefore entitled to receive the assignment and relocation grants as per the provisions of staff rule 107.20 (i). Moreover, the Tribunal noted that the Applicant had been entitled to travel to Rome, Italy, at the end of the contract immediately preceding his fixed-term appointment at the expense of the Organization, since this would

have constituted appointment related travel. However, the trip to Rome would have made no difference to his entitlements on recruitment.

5. *Judgment No. UNDT/2010/085 (6 May 2010): Ishak* v. *Secretary-General of the United Nations*[7]

Preparatory decisions—Receivability—Definition of administrative decisions—Abuse of proceedings

The Applicant was a member of the Office of the United Nations High Commissioner for Refugees (UNHCR) since 1984. From August 1991 to October 1998 he served as Chairperson of the UNHCR Staff Council. Following a number of missions and assignments, the Applicant was again elected as Chairperson of the UNHCR Staff Council and was released from his duties from 15 June 2007 to 30 June 2008.

From 16 to 21 March 2009 the UNCHR annual promotions session for 2008 took place, but the Applicant was not among the persons promoted. On 16 June 2009, the Applicant submitted to the Secretary-General a request for review of certain decisions that allegedly prevented his being promoted. On the same day, the Applicant submitted to the Geneva Joint Appeals Board (JAB) a request for suspension of the decision to convene the 2008 recourse session on 22 June 2009. By decisions dated 22 June 2009 and 31 July 2009, the JAB and the Deputy High Commissioner (DHC), respectively, rejected the requests on the ground of inadmissibility *ratione materiae*, as the decisions in question were not considered "administrative decisions". The DHC further noted that in the interim, the Applicant had been promoted to P-5 level on 28 July 2009. After being granted an extension for submission, the Applicant submitted an application to the Tribunal contesting the JAB and the DHC decisions on 30 November 2009.

The Tribunal first ruled on the Applicant's request that his case be heard elsewhere than in Geneva. The request was based on allegations of bias and conduct detrimental to the Applicant made against the Geneva Registrar. The Tribunal rejected these allegations, since all of that officer's acts were carried out under the control and sole responsibility of the judge. The Tribunal noted that, while it is every staff member's right to submit applications, that right does not entail the right to include in submissions abusive or defamatory remarks about those whose work is to assist in the proper functioning of the Organization's internal justice system.

Turning to the question of receivability, the Tribunal referred to article 8.1(c) of the Statute of the United Nations Dispute Tribunal (UNDT) which provides that an application is only receivable if the contested administrative decision has previously been submitted for management evaluation. The Tribunal decided to take into account only the decisions contested in the applicant's request for review dated 16 June 2009 and declared irreceivable all the other petitions.

The Tribunal then considered whether the contested decisions were "administrative decisions" pursuant to article 2.1 of the UNDT Statute. The Tribunal referred to Judgment No. 1157 (*Andronov*, 2003) of the United Nations Administrative Tribunal, where an "administrative decision" was defined as "a unilateral decision taken by the adminis-

[7] Judge Jean-François Cousin (Geneva).

tration in a precise individual case, which produces direct legal consequences to the legal order". The Tribunal noted that the decisions at hand were all preparatory decisions connected with the promotions sessions and their legality could only be disputed in the light of the final decision as to a staff member's promotion, a decision within the competence of the High Commissioner. Such preparatory decisions were not in themselves capable of adversely affecting the Applicant's legal situation, since they modified neither the scope nor the extent of his rights.

Moreover, the Tribunal noted that even if the Applicant had only obtained a promotion to P-5 as a result of the recourse session, he had no further interest at the time when he submitted his application to the Tribunal in contesting a procedure that had led to his being promoted. In view of the foregoing, The Tribunal considered the application irreceivable. Thus, it decided there was no need to rule on any of the Applicant's other petitions in the present proceedings.

Finally, the Tribunal analyzed whether to grant the Respondent's request for costs pursuant to article 10.6 of the UNDT Statute. The Tribunal determined that in asking for the case to be heard elsewhere than at Geneva, the Applicant committed a manifest abuse of proceedings, the terms used to justify the request being "clearly outrageous". Furthermore, the Applicant had been promoted and therefore had no interest in contesting the procedure. The Tribunal ordered the Applicant to pay UNHCR costs in the amount of 2,000 Swiss francs (CHF) corresponding to part of the salaries paid to the UNHCR legal officers during the period devoted to responding to the abusive application. The Tribunal authorized UNHCR to deduct this sum directly from the Applicant's salary.

6. *Judgment No. UNDT/156/2010 (31 August 2010): Shkurtaj* v. *Secretary-General of the United Nations*[8]

Enforcement of ethics policy in case of protection for retaliation—Adequate and objective examination of complaint—Secretary-General's bulletins not applicable to separately administered organs and programmes unless otherwise stated—Due process rights—Investigative panel must make staff member aware of adverse findings and provide staff member with an opportunity to comment and explain—Compensation for breach of due process rights, damage to career, reputation and emotional distress

On January 2005, the Applicant joined the United Nations Development Programme (UNDP) country office in the Democratic People's Republic of Korea (DPRK) on a Special Services Agreement (SSA). In 2005 and 2006, the Applicant raised concerns and allegations with respect to some financial and administrative aspects of UNDP's operations in DPRK. On 5 June 2007, after the expiration of his last consultancy contract, the applicant contacted the Ethics Office, requesting protection from retaliation as a result of the concerns he had raised. Although the Ethics Office did not have jurisdiction to examine this case, the Director of the Ethics Office (DEO) reviewed the matter in August 2007 and found that there was a *prima facie* case of retaliation. In light of this finding, on 11 September 2007, UNDP announced the establishment of an *ad hoc* investigative body, the External Independent Investigative Review Panel (EIIRP), to examine the allegations con-

[8] Judge Memooda Ebrahim-Carstens (New York).

cerning the operations of the UNDP office in DPRK, including the Applicant's claims of retaliation. The EIIRP issued its final report on 31 May 2008, concluding that UNDP had not retaliated against the Applicant. It also noted that it had "serious reservations about [the Applicant's] credibility and trustworthiness", since the Applicant had not been able to provide promised documentary evidence to back up his allegations. The report was publicly released and made available on the website of the UNDP. On 27 June 2008, after reviewing the report, the DEO concurred with the EIIRP's findings and did not recommend any additional investigation. However, he did find that the Applicant had not been given a chance to reply to the adverse findings concerning his credibility and trustworthiness and recommended compensation.

On 26 November 2007, the Applicant submitted two statements of appeal with the Joint Appeals Board, against UNDP and the Secretary-General, in relation to the contested administrative decisions. On 5 December 2008, the JAB rejected the claims, finding that they were not receivable because the Applicant was not a staff member at the relevant time, but had instead been engaged as a consultant under an SSA. The Secretary-General decided to accept the findings and recommendations of the JAB. Shortly thereafter, by letter dated 29 January 2009, UNDP informed the Applicant that no further action would be taken in his case.

The Applicant filed two separate appeals with the Tribunal, contesting (i) the Respondent's refusal to subject the Applicant's request for protection from retaliation to review under the ethics policy as set out under ST/SGB/2005/21; and (ii) the decision of the Secretary-General not to implement the Ethics Office recommendation of compensation. The Tribunal decided to examine both matters jointly and to deal with them in one judgment.

The Tribunal first considered whether the Applicant had standing to file the applications. The Respondent submitted that the appeals were not receivable because the Applicant was not a staff member when he raised his allegations. The Tribunal pointed out that it could not be the case that the Applicant was a potential subject of retaliation during the periods of July 2005 to June 2006 and September 2006 to March 2007, when he was on an SSA, but somehow ceased to be such between June and September 2006, when he was a staff member on appointment of limited duration. Therefore, the Tribunal found that the Applicant had demonstrated a sufficient nexus between the time period he worked as a staff member, the allegations he raised with respect to the operations of the UNDP office in DPRK, and his allegations of retaliation to find his appeal receivable.

With regard to the ethics policy issue, the Tribunal first examined whether the Applicant's retaliation allegation was adequately and objectively reviewed. Pursuant to paragraph 3.4 of ST/SGB/1997/1, Secretary-General's bulletins are not applicable to separately administered organs and programmes of the United Nations unless otherwise stated therein. Secretary-General's bulletin ST/SGB/2005/21 did not contain a provision extending its application to UNDP and was thus not part of the Applicant's contract with the Organization. However, the Tribunal considered that the Organization was still required to act fairly towards the Applicant, which meant that UNDP had to examine the concerns and allegations raised by the Applicant. The Tribunal found that the EIIRP investigation and the review by the DEO effectively constituted reasonable safeguards. It therefore dismissed the ethics policy complaint.

As to the compensation issue, the Respondent submitted that there was no procedural violation in this case because the Applicant had ample opportunity to meet with the EIIRP and provide relevant information and evidence. However, the Tribunal noted that the opportunity to be interviewed and to provide information and evidence to assist investigators is wholly distinct from being made aware of significant adverse findings against the whistleblower himself and him being given an opportunity to reply to them. As a staff member, the requirements of good faith and fair dealing applied to the Applicant and he was entitled to be treated fairly, honestly and in accordance with the obligations of due process.

The Tribunal concluded that the Ethics Office had correctly determined that the Applicant had not been provided with the opportunity to comment on the adverse findings made by the EIIRP. This failure resulted in a violation of the Applicant's due process rights, damaged his career prospects and professional reputation, and caused him emotional distress. The Tribunal ordered the Respondent to pay fourteen months' net base salary as compensation for this procedural violation and the resulting harm. In addition, the Respondent was ordered to compensate the Applicant for the delay in considering the Ethics Office's recommendation.

7. Judgment No. UNDT/2010/169 (24 September 2010): Yapa v. *Secretary-General of the United Nations* [9]

Standard of review for disciplinary cases—Regularity of disciplinary procedure—Due process—Cooperation during administrative investigation—Disciplinary measure not foreseen in the Staff Rules—No punishment without a written rule foreseeing it

On 7 December 2006, the Applicant took a French written examination for the recruitment/promotion of security officers. After the candidates had been asked to put away all materials, the exam invigilator noticed that the Applicant had kept a sheet of paper on his desk with samples of briefings in French. After having the Applicant sign the sheet in question, the invigilator took it and invited him to continue the examination process.

On 14 March 2007, the Chief of the Human Resources Management Services, Geneva, informed the Assistant Secretary-General, Office for Human Resources Management (ASG/OHRM), New York, of the alleged misconduct and proposed that the case be submitted to the Joint Disciplinary Committee (JDC) for advice. The Applicant was contacted but refused to cooperate with the preliminary investigation. On 28 February 2008, the JDC submitted its report to the Secretary-General with a recommendation that no disciplinary measure be imposed, but that a written reprimand be issued according to staff rule 110.3(b)(i). On 10 April 2008, the Secretary-General rejected the JDC recommendation and imposed a written censure on the Applicant pursuant to rule 110.3(a)(i) of the Staff Rules in force at the time and demoted him by one grade under rule 110.3(1)(vi), with no possibility of promotion for two years.

By application dated 12 December 2008, the Applicant appealed the above-mentioned decision to the former United Nations Administrative Tribunal. On 1 January 2010 the case was transferred to the United Nations Dispute Tribunal (UNDT).

[9] Judge Jean-François Cousin (Geneva).

With regard to the merits, the Tribunal noted that when an application contesting the legality of a sanction imposed on a staff member is at issue, it must examine, first, whether there were any procedural irregularities; second, whether the alleged facts had been established; third, whether the facts constituted misconduct; and finally, whether the sanction imposed was proportionate to the misconduct.

With regard to the regularity of the procedure, the Applicant claimed that he had not been informed of the charges against him by the person conducting the preliminary investigation, nor that his refusal to cooperate could constitute misconduct. The Tribunal observed that, in accordance with administrative instruction ST/AI/371 of 2 August 1991, the Administration must inform a staff member in writing only when the ASG/OHRM has decided that disciplinary proceedings should be instituted. It is this notification that marks the start date of disciplinary proceedings. On the other hand, pursuant to staff rule 104.4(e) a staff member must cooperate with the Administration in a preliminary investigation if so requested. Accordingly, the Tribunal determined that the Applicant did not have a right to refuse to cooperate with the preliminary investigation. The Tribunal emphasized that staff members must respect obligations stemming from their status without the Administration being bound to remind them thereof.

Next, the Applicant contested the JDC's decision to reject his request to recuse a member of the panel constituted to examine his case. The Tribunal determined that the statements of a general nature that the panel member reportedly made as to the value for the JDC of oral hearings and the examination of witnesses were not such that a bias against the Applicant might have been established. The Tribunal also noted that the fact that one of the witnesses heard by the JDC, namely the exam invigilator, was a colleague of certain members of the JDC did not remove the value of her testimony, given that she was the main witness of the facts of which the Applicant stood accused.

The Applicant further alleged that a paragraph had been added to the JDC report by one of the panel members with the help of the JDC Secretary, but failed to provide any corroboration of these accusations. The Tribunal condemned the malicious nature of the Applicant's defamatory allegations and reminded the Applicant in the strongest possible terms that the right of a staff member to submit an application and develop his or her arguments does not give him or her the right to make false accusations against staff members who are not a party to the dispute. In conclusion, the Tribunal found that the Applicant failed to establish the irregularity of the disciplinary procedure.

Turning to the facts of the case, the Tribunal found that an attempt to cheat and a refusal to cooperate with the Administration had been established. Given that, by virtue of staff regulations 1.2 (b) and 1.3, staff members are expected to maintain the highest standards of integrity, the Tribunal considered that an attempt by a security officer to cheat on an exam and to impede an investigation constituted misconduct, even if the results of the exam were not of great importance for the staff member.

Finally, as to the type of the sanctions that could be legally imposed, the Tribunal observed that there was no text providing that a demotion may be combined with a ban on promotion for a specific duration. Pursuant to the general principle that there can be no punishment without a written rule foreseeing it, the Tribunal declared the accessory punishment of a two-year ban illegal. The Tribunal further determined that the written censure and demotion imposed were not disproportionate to the misconduct, given that

an attempt to cheat on an exam points to a certain lack of integrity, especially for a security officer, and can only be severely punished.

In conclusion, the Tribunal refused to compensate the Applicant for any moral damages, but it ordered the Administration to pay him the sum of CHF1,000 as material damages suffered from the unlawful ban on promotion for a specific duration. All other requests were rejected.

8. *Judgment No. UNDT/179/2010 (14 October 2010): Vangelova* v. *Secretary-General of the United Nations*[10]

Standard of review for non-promotion decisions—Receivability—United Nations Dispute Tribunal Statute superior to Staff Rules—Discretionary nature of promotion decisions—Similar acts require similar rules—Moral damages

The Applicant had been working for the United Nations High Commissioner for Refugees (UNHCR) since 1992. In March 2009, the UNCHR Appointments, Postings and Promotions Board (APPB) convened for the 2008 promotion session, but decided not to recommend the Applicant for promotion. The Applicant contested this decision by email dated 26 May. The APPB reviewed the request but did not change its recommendation. By letter dated 25 September 2009, the Applicant submitted a request to the Deputy High Commissioner for management evaluation. On 21 October 2009, the Applicant was informed that it would not be possible to respond to her request for management evaluation within the stipulated time limit, but that the absence of a response did not impact on the time within which she could file an application to the Tribunal. On 4 December 2009, the Deputy High Commissioner sent the Applicant the memorandum containing the results of the management evaluation, which explained that the decision not to promote her to the P-4 level had been taken in accordance with the Organization's rules and procedures. The Applicant received the results on 8 December 2009.

On 4 March 2010, the Applicant filed an application before the Tribunal. The Tribunal informed the parties that it intended to raise on its own motion the issue of the legality of the 2008 promotion session.

The Tribunal first analyzed whether the application had been timely filed in accordance with article 8, paragraph 1, of the United Nations Dispute Tribunal (UNDT) Statute. It noted that the Statute and the Staff Rules were contradictory and decided that the Statute was superior to the Staff Rules. Although the Statute required staff members to file their application with the Tribunal within 90 days of the response period of 45 days for the management evaluation if no response to the request was provided, when the management evaluation was received after the deadline of 45 days but before the expiry of the next deadline of 90 days, the receipt of the management evaluation would result in setting a new deadline of 90 days for challenging it before the Tribunal. Therefore, in the present case, the application was declared timely.

The Tribunal reaffirmed that, given the discretionary nature of promotion decisions, it could only assess the regularity of the procedure followed and the factual errors in the review of the staff member's career.

[10] Judge Jean-François Cousin (Geneva).

The Tribunal then turned to its own motion, namely to ascertain whether the High Commissioner was in a position to accept a proposal of the Joint Advisory Committee (JAC) to fix 31 December 2008 as the cut-off date to determine the seniority and eligibility of staff members, in contravention to the APPB Rules of Procedure and Procedural Guidelines, which fixed such deadline for October. The Tribunal noted that the APPB rules and guidelines had been established by the High Commissioner upon advice of the JAC, and that a later legal text adopted by a similar procedure could legally modify the preceding one. The decision of the High Commission was thus not illegal.

The Tribunal found that the Applicant had not provided specific facts establishing that the legal instruments guiding the selection of staff for promotion had not been followed. Accordingly, it rejected her claim that the promotions procedure had not been transparent. The fact that the Administration was late in forwarding the 2008 promotions methodology to staff members did not constitute a procedural flaw, as no legal instrument stipulated a deadline for this communication. The recommendation of the former Joint Appeals Board, to communicate the methodology to staff one year in advance of the promotion session, was not binding upon the Administration. The Tribunal pointed out that, although the Procedural Guidelines specified that seniority shall be considered in recommending staff members for promotion, they did not specifically require that the number of rotations and functional diversity be taken into account.

On the other hand, the Tribunal determined that the Applicant was correct in asserting that the High Commissioner may not promote a staff member if his or her situation had not been examined previously by the APPB. From the review of the file, the Tribunal found that the High Commissioner had promoted a non-eligible staff member who, because he or she was not eligible, had not been considered by the APPB. Since there were a limited number of promotion slots, the Tribunal rescinded the decision not to promote the Applicant. Pursuant to article 10.5 of the UNDT Statute, the Tribunal gave the Respondent the option to carry out the order to rescind the decision or to pay the Applicant the sum of CHF8,000.

With regard to the Applicant's request for moral damage, the Tribunal considered whether the Applicant would have had a real chance of being promoted if the Administration had applied the existing rules. Given the fact that for the last two years the Applicant had not been recommended for promotion by her supervisors, the Tribunal considered that her chances for promotion were close to zero and that there was no need to compensate her for any moral damage.

9. *Judgment No. UNDT/191/2010 (25 October 2010): García* v. *Secretary-General of the United Nations*[11]

Cancellation of appointment—Document creating legally binding obligations between the Organization and its staff need not be called "letter of appointment"—Contracts may have a future date of commencement—Averment in pleadings does not constitute evidence

While engaged under a Special Service Agreement (SSA), the Applicant successfully participated in a competitive selection process for an L-5 position with the United Nations

[11] Judge Memooda Ebrahim-Carstens (New York).

Development Programme (UNDP). On 24 August 2007, the Applicant, still under the SSA, accepted an offer of appointment for a one-year contract, commencing on 1 October 2007, subject to "a number of clearances" and "formalities".

On 9 September 2007, UNDP was informed by the authorities of the United Kingdom that the Applicant was suspected of conspiring with a consultancy firm to ensure the award of a contract with UNDP to a pharmaceutical company. On 21 September 2007, the same date on which the Applicant was issued a United Nations laissez-passer, UNDP advised him about the "cancellation of his appointment". The Applicant was allowed to keep USD19,822 that had already been transferred to him as a relocation grant.

The Applicant sought administrative review of the decision to cancel his appointment and subsequently filed an appeal with the Joint Appeals Board (JAB). Based on the findings and recommendations of the JAB, the Secretary-General decided to reject the Applicant's appeal. The Applicant then filed an application with the Tribunal contesting the decision of the Secretary-General and seeking reinstatement and financial compensation. The Respondent replied that the Applicant was not a staff member at the time of the contested decision as the contract had not been effected and therefore his request was not receivable.

The Tribunal observed that the main legal issue in the case was whether the Respondent's offer of appointment and the Applicant's acceptance thereof resulted in a binding contract. Under staff regulation 4.1, upon appointment each staff member shall receive a letter of appointment. The Tribunal explained that this did not mean that the only document capable of creating legally binding obligations between the Organization and its staff had to be called a "letter of appointment". In the present case, the offer of appointment accepted by the Applicant and the communications between the parties contained the necessary material terms for the formation of a binding contract, including those stipulated in the provision of Annex II to the Staff Regulations, such as the nature and the period of employment, the category and level of the appointment, the details concerning salary, the acceptance and receipt of the Staff Rules and Regulations, and other conditions of employment. Therefore, the Tribunal determined that the offer and acceptance produced a legally binding contract and that there was no basis for supposing that the parties intended any subsequent letter of appointment to vary or add to the terms of appointment in any significant respect. The Tribunal specifically distinguished this case from its findings in Judgment No. 072 (*Adrian*, 2010), Judgment 098, (*Gabaldon*, 2010) and those of the United Nations Appeals Tribunal in Judgment No. 029 (*El-Khatib*, 2010), as well as from the jurisprudence of the former United Nations Administrative Tribunal in view of the unique language of the offer of appointment, the surrounding circumstances, and the legal relationship created between the parties.

The Tribunal then turned to discuss the effect of the conditions, if any, included in the offer of appointment. The Respondent submitted that the offer was subject to some conditions being met, including clearances concerning technical and competency requirements. The Tribunal found the reference to competencies and UNDP's core values in this context misguided, as it was clear from the UNDP's recruitment guidelines that the verification of technical and competency requirements took place during the selection exercise. There was no evidence to suggest that such requirements had to be checked again after the completion of the selection process, and more importantly that the Applicant failed or would have

failed them. The Tribunal agreed with the Applicant's view that the conditions encompassed routine medical and security clearances, which he already had due to the previous relationship between the parties. In this regard, the Tribunal further noted that since the Applicant took steps to relocate to Cairo, the Respondent should have understood that he believed that all clearances and formalities had been finalized. There was no evidence to support the Respondent's averment that the Applicant had failed to satisfy any clearances and formalities. The Tribunal specified that an averment in pleadings does not constitute evidence. Further, the Tribunal considered the Respondent's payment of a relocation grant to the Applicant an admission of liability for some loss and damages and that it rendered unsustainable the Respondent's position that there was no contract between the parties.

Moreover, the Tribunal noted that nothing precluded the Applicant from performing duties under his SSA, while at the same time being in a binding agreement with the Organization. In the Tribunal's view, there was no reason why parties could not enter into a binding contract on a particular date with a future date for commencement of duties.

In conclusion, the Tribunal found the application receivable as there was a binding contract between the parties. The Respondent's refusal to execute the employment relationship was held to be in breach of the contract and further submissions were requested to determine the appropriate relief.

10. Judgment No. UNDT/2010/203 (22 November 2010): O'Neill v. *Secretary-General of the United Nations*[12]

Non-selection claim—Tribunal's *ex officio* duty to examine receivability—Request for administrative review or management evaluation is a mandatory first step in any appeal process before the Tribunal—Applicant must identify clearly appealed decision for an application to be receivable—Specific performance under article 10.5 of the Tribunal's Statute does not include specific performance of a recommendation of the Joint Appeals Board, which is advisory only and does not constitute a contestable administrative decision

On 17 September 2005, the Applicant applied to a vacant P-5 post of Section Chief, Peacekeeping Audit Service, Internal Audit Division (IAD), Office of Internal Oversight Services (OIOS). The Applicant was not selected for this position. By letter dated 24 July 2006 to the Secretary-General, the Applicant requested an administrative review of the decision. On 24 August 2006, the Administrative Law Unit refused the Applicant's request. On 18 September 2006, the Applicant filed an appeal before the Joint Appeals Board (JAB).

On 26 June 2006, the Applicant sent a privileged and confidential letter ("confidential letter") to the Under-Secretary-General for OIOS (USG), expressing concern regarding the Applicant's non-selection for several posts within OIOS. On 11 October 2006, the USG forwarded the confidential letter to four staff members. According to the Applicant, this 11 October 2006 communication constituted a prohibited release of confidential information about the Applicant, who was in the midst of the JAB appeal process. The JAB *sua sponte* addressed this issue and found that the Respondent owed the Applicant an apology

[12] Judge Marilyn J. Kaman (New York).

for forwarding the confidential letter to staff members. However, it dismissed the non-selection claim.

On 25 January 2008, the Deputy Secretary-General (DSG) rejected the issuance of an apology regarding the confidential letter, instead referring the Applicant for "any recourse" to the former United Nations Administrative Tribunal ("Administrative Tribunal"). Thereafter, the Applicant filed an appeal before the Administrative Tribunal. On 1 January 2010 the case was transferred from the Administrative Tribunal to the United Nations Dispute Tribunal for it to rule on issues concerning both the receivability and the merits of the relief of the appeal against the USG's decision to forward the confidential letter.

First, the Tribunal examined *ex officio* the question of receivability. Pursuant to article 2 of the United Nations Dispute Tribunal (UNDT) Statute, if an appeal has not undergone a "management evaluation", or an "administrative review" as it was referred to under the former staff rule 111.2 (a), the appeal is irreceivable. The Tribunal found that the Applicant had not identified the appealed decision as being the non-selection claim. Therefore, the only decision purportedly before the Tribunal was the confidential letter, an issue that had never been the subject of administrative review and that had not been formally preserved for appeal. The Tribunal observed that the confidential letter was not mentioned in the 24 July 2006 request for the administrative review of the non-selection decision, and that the confidential letter was only released on 11 October 2006, approximately three months after the request for administrative review. The issue of the USG releasing the confidential letter was not mentioned at all, until it was referred to in the JAB report of 8 September 2007. Thus, the Tribunal determined that the application was not receivable under article 8.1(a) of the UNDT Statute.

The Tribunal then turned to analyze *ex officio* whether the DSG's statement that "any recourse" should be directed to the Administrative Tribunal, constituted an acceptance by the Respondent of the JAB *sua sponte* decision and a waiver or an exception from the requirement of administrative review under former staff rule 112.2.(b). The Tribunal found that such a broad interpretation could not be made. First, the decision to distribute the confidential letter stood on its own. That is, it would need to be determined whether the confidential letter was indeed a privileged and confidential communication and, if so, whether it was improper for the USG to have forwarded the confidential letter. Neither the parties nor the JAB addressed these issues. Second, the assessment of these issues bore nothing in common with the non-selection decision or whether an apology was an appropriate remedy. Third, nothing in the DSG's letter indicated that the Respondent had ever considered making an exception.

In this regard, the Tribunal further held that even if the "any recourse" language in the DSG's 25 January 2008 letter was misleading, faulty or interpreted as a waiver from the requirement of administrative review, the Applicant's appeal would already have been time-barred. Under former staff rule 111.2(a) the Applicant would have been required to submit his request for administrative review no later than two months after being notified in writing of the USG's release of the confidential letter. No information existed in the case about when this occurred, but it must have been before the release of the JAB report on 8 November 2007. The Tribunal noted that the latest possible deadline for the Applicant to request an administrative review would have been 8 January 2008. Therefore, any defects regarding receivability could not be made attributable to the DSG's letter.

Finally, the Tribunal observed that even if the Applicant's appeal were considered to be receivable, he did not substantiate the harm suffered from the distribution of the confidential letter, since a mere reference to harm to career and reputation was not sufficient. As for the apology, the Tribunal noted that it was not authorized to take action against the Respondent for not issuing it. Although the Tribunal may order specific performance to a contested decision under article 10.5 of the UNDT Statute, this provision does not include specific performance of a JAB recommendation, which was advisory only and did not constitute a contestable administrative decision. In applying these criteria, the Tribunal noted that its findings regarding an apology were not to be interpreted as the Tribunal either approving or rejecting that the Tribunal was authorized to issue an apology as an appropriate remedy under the UNDT Statute.

The Applicant's appeal was dismissed as not receivable.

11. Judgment No. 214/2010 (16 December 2010): Kamunyi v. *Secretary-General of the United Nations*[13]

Policy of the Organization with regard to the possession and carrying of firearms by staff members—Under the former Staff Rules and Regulations, suspension requires a charge of misconduct and a decision of the Secretary-General or his delegate—Distinction between special leave with full pay and suspension with pay—"Exceptional cases" for special leave with full pay do not include disciplinary measures—Removal of grounds pass only lawful in case of suspension—Procedures to be taken by the Organization with respect to the handling of a request to waive the privileges and immunities for the arrest of a staff member—Insubordination requires proof of refusal of a lawful and reasonable instruction—Transfer of position at the discretion of the Secretary-General

On 16 May 2006, the Applicant, a Security Officer who was attached to the Security and Safety Service at the United Nations Office at Nairobi (UNON/SSS), was involved in a roadside incident in the Kasarani area of Nairobi that resulted in the disappearance of his personal firearm. On 19 May 2006, the Acting Director-General of UNON received an anonymous e-mail which contained details of an alleged plot to kill her. The e-mail referred to the removal of a weapon and ammunition from UNON/SSS. On 24 May 2006, the Kenya Police reported that a Glock pistol registered to the UNON/SSS had been found in the Kasarani area of Nairobi. It was subsequently identified by UNON security officers as a pistol missing from the UNON/SSS armoury. The Kenya Police suspected that the Applicant could have been in possession of both his own and the UNON firearm on the same night and they wished to interview him about this.

On 26 May 2006, the Chief, UNON/SSS, called the Applicant to a meeting, at which he requested the surrender of the Applicant's private weapon. The Applicant refused and, as a result, he was ordered out of the UNON grounds and to hand in his grounds pass. Moreover, the Chief, UNON/SSS, verbally suspended Applicant "indefinitely". In a recorded statement, the Applicant explained that according to Kenyan firearms legislation he could only give his firearm to a licensing official or other authorized person; his concern about the safety of unloading a firearm inside a closed room; and his belief that there were

[13] Judge Coral Shaw (Nairobi).

no restrictions on United Nations staff members carrying weapons in the UNON complex. During the meeting, the Applicant aired those concerns but was not answered except for the unequivocal order to comply.

On 29 May 2006, the Applicant was informed that he had been placed on special leave with full pay ("special leave") "until further notice". On the same date, the Kenya Diplomatic Police wrote to the Chief, UNON/SSS, seeking a waiver of the Applicant's privileges and immunities as a United Nations staff member so he could be questioned about the theft of the missing UNON firearm. Following a meeting between the Police Commissioner and the Chief, UNON/SSS, the Applicant was arrested and confined by the Kenya Police from 9 June to 12 June 2006. The Kenya Police reported to UNON on 5 December 2006 that they did not have anything tangible to incriminate the Applicant.

The Investigations Division, Office of Internal Oversight Services (ID/OIOS) then conducted two internal investigations on the incidents. The investigations lasted more than two years, during which the Applicant remained on special leave. On 24 January 2008, the Office of Human Resources Management (OHRM) advised the applicant that the special leave would be converted into suspension with pay due to the nature and gravity of the allegations against him. Based on the findings of the ID/OIOS report, the Applicant was not charged in relation to the theft of the UNON firearm or the death threat, but faced one formal charge for insubordination. He was suspended from duty with pay on 4 February 2008. On 16 July 2008, the Applicant was advised by the Officer-in-Charge, OHRM, that his suspension had come to an end and that she had decided not to pursue the case as a disciplinary matter. Instead, the Applicant was reprimanded for his refusal to hand over his personal firearm to his supervisor. He was also told that he was to be transferred from UNON/SSS to UNON Conference Services.

Following these actions, the Applicant submitted two separate appeals to the Joint Appeals Board (JAB). The appeals were consolidated by the JAB and transferred to the Tribunal on 1 July 2009.

The Tribunal first examined whether the Applicant had been suspended or put on special leave on 26 May 2006 and whether this had been lawful. Pursuant to the Tribunal's reading of former staff rule 110.2 and of administrative instruction ST/AI/371, if a suspension was to occur it had to follow two events, namely a charge of misconduct and a decision of the Secretary-General or his delegate, the Assistant Secretary-General (OHRM). It noted that the requirement of misconduct for suspension had changed with the introduction of staff rule 10.4, dated 2 September 2010, which contemplates administrative leave pending investigation and the disciplinary process. In the present case, the Tribunal determined that the Applicant had been verbally suspended by the Chief UNON/SSS without a charge of misconduct. Additionally, the Applicant was not given a written statement of the reasons and duration for the suspension. For these reasons, the suspension was considered in breach of the former Staff Rules.

The second issue of the case was whether the Applicant had been lawfully placed on special leave on 29 May 2006. The Tribunal noted that former staff rule 105.2 conferred a general power on the Secretary-General to grant special leave in exceptional cases. The Tribunal concluded that the words "exceptional cases" related to situations that did not include or refer to disciplinary measures, since the staff rules on disciplinary measures had their own provisions for suspension. The Applicant had been placed on special leave

pending an investigation into grave allegations. However, no disciplinary proceedings had been initiated against him. Therefore, the Tribunal considered the invocation of the discretion under staff rule 105.2 to be in breach of the Staff Rules. Furthermore, the Tribunal noted that the continuation of the special leave for over one and a half years amounted to gross delay. On the other hand, the Tribunal found that the suspension of the Applicant, once the charges of misconduct had been made, was lawful, as it met all the preconditions required by staff rule 110.2.

The Tribunal then turned to analyze whether UNON had followed proper the procedures with respect to the handling of the request for waiver and the arrest of the Applicant by the Kenya Police. The Applicant submitted that the Chief UNON/SSS had exercised powers he did not have and did not act to safeguard his privileges and immunities. The Respondent contended that the arrest and detention was a unilateral and independent action by the Kenya Police and that no officer of the United Nations had acceded to the request for waiver. Further, the Respondent contested that the Applicant enjoyed immunity from arrest, since the Applicant had not reported the roadside incident to the United Nations, nor did it happen in the course of the discharge of his duties. In this regard, the Tribunal considered that, although the Applicant was locally recruited, he was not paid an hourly rate and therefore was covered by articles V and VII of the Convention on the Privileges and Immunities of the United Nations of 13 February 1946.[14]

Relying partly on the expert opinion of a Senior Legal Adviser of UNON (SLA) as to the procedures to be taken by the Organization when, prior to interview or arrest, it is asked by a host country to waive the privileges and immunities of a staff member for a particular purpose, the Tribunal determined that the procedures in the relevant United Nations legal provisions had not been followed. It found that the Chief, UNON/SSS, had said enough to the police commissioner to give him the impression that waiver of immunity had been granted. According to the Tribunal, a letter of request should come from the Ministry of Foreign Affairs of the host country. Only the signatures of the Head of State, the Prime Minister and the Minister of Foreign Affairs are recognized for this purpose. Additionally, the letter should be addressed to the head of the United Nations at the duty station. In the present case, although the Chief, UNON/SSS, had advised the Director-General and the SLA of the requests for waiver, he had not received the advice or support expected from those charged with making the complex legal and diplomatic decision. Moreover, the request for a waiver was under the letterhead of the Office of the President, but was not written on behalf of the President. It was signed in the name of the head of the Diplomatic Police Unit.

The Tribunal further explained that an inquiry is to be undertaken at the duty station to ascertain the background of the request. This information is then transmitted to the Office of Legal Affairs, New York, and may be accompanied by a recommendation from the duty station. It is exclusively for the Secretary-General to determine the distinction between acts performed in an official or private capacity for the purpose of assessing a request from a host country to waive the privileges and immunities of an official of the United Nations. However, the decision is made on behalf of the Secretary-General by the Under-Secretary-General for Legal Affairs ("the Legal Counsel") and sent to the

[14] United Nations, Treaty Series, vol. 1, p. 15, and vol. 90, p. 327 (corrigendum to vol. 1). See General Assembly resolution 76(1).

Director-General and the SLA at the duty station. If the waiver is granted it will usually have conditions attached, such as the specific purpose of the waiver, the duration of the interview or detention and the place of the interrogation. Further, when an arrest is made without a waiver or the knowledge of the Secretary-General, United Nations Headquarters should be immediately informed so a protest can be raised and to ensure that the staff member's rights are guarded. In the Applicant's case, no formal decision was made at the United Nations Headquarters about an official response. The Tribunal found that the United Nations made no formal protest or communication to the Kenya Ministry of Foreign Affairs over the arrest.

Regarding the Respondent's decision to reprimand the Applicant due to refusal to hand over his fireman to his supervisor, the Tribunal found that the Applicant's behaviour at the 26 May 2006 meeting fell short of insubordination. A reprimand was therefore unsubstantiated and unjustified. The Tribunal noted that insubordination requires not only proof of a refusal of an instruction given by a superior, but also evidence that the instruction is lawful and reasonable. It observed that the Applicant's refusal was not unconditional. He wanted to be satisfied that he was receiving a lawful instruction and the Chief, UNON/SSS, did nothing to reassure the Applicant of the lawfulness of his request. As to the Respondent's allegation that the Applicant posed a security threat that needed urgent action, the Tribunal considered it was undermined by the Applicant's willingness to sit to give a rational explanation for his actions. The Tribunal concluded that the basis for the suspicions about the Applicant's involvement in the disappearance of the UNON firearm was weak and that the order of the Chief, UNON/SSS, to hand over the private firearm had dubious legal foundation and was unreasonable. On the other hand, the Tribunal determined that there was no breach of due process in relation to the charge of insubordination, since even though the charges were laid long after the event, the Applicant had been fairly and properly advised of the charge and had been given an opportunity to respond.

With regard to the lawfulness of Applicant's transfer from his position of Security Officer to UNON Conference Services, the Tribunal determined that the transfer was a lawful exercise of the discretion of the Secretary-General contemplated in staff regulation 1.2(c). While it would have been fairer if the Applicant had been consulted and given the rationale for the decision before it was finalized, it was prudent management to avoid the almost inevitable conflict that would have occurred if the Applicant had resumed his previous employment as if nothing had happened.

In conclusion, the Tribunal ordered the rescission of the unlawful decision to suspend the Applicant, to place him on special leave and to reprimand him for insubordination. The Respondent was ordered to pay the Applicant compensation for the negative effects of the breaches and the failures of procedure in accordance with the provisions of article 10(5) of the Statute.

B. 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.

By resolution 64/119 of 6 December 2009, the General Assembly approved the rules of procedure of the United Nations Dispute Tribunal and the United Nations Appeals Tribunal, as established by the respective Tribunals on 26 June 2009.

The United Nations Appeals Tribunal held its first session from 15 March to 1 April 2010. It held two more sessions in 2010, from 21 June to 1 July and from 18 to 29 October, and rendered a total of 100 decisions that year.

1. *Judgment No. 2010-UNAT-001 (30 March 2010): Campos* v. *Secretary-General of the United Nations*[15]

Staff nominations—Operation of the Staff Management Coordinating Committee—Appointment of judges to the United Nations Dispute Tribunal and the United Nations Appeals Tribunal—Request for arbitration—Request for an oral hearing—Weight of vote by staff association—Management interference in union affairs—Freedom of association—Conflict of interest—Recusal of judges—Professional relationship—Dissolution of the United Nations Dispute Tribunal and the United Nations Appeals Tribunal

The Appellant, a Senior Interpreter at the United Nations Office at Geneva, had been nominated by three staff associations, representing the majority of United Nations staff, for a position on the Internal Justice Council (IJC). The purpose of the IJC was, *inter alia*, to assist in the recruitment of suitable judicial candidates for appointment by the General Assembly as judges to two newly established tribunals, the United Nations Dispute Tribunal (UNDT) and the United Nations Appeals Tribunal (UNAT).

After the Staff Management Coordinating Committee (SMCC) selected another candidate, Ms. J. Clift, who had been nominated by ten other staff associations, the Appellant filed several appeals to the Joint Appeals Board, challenging the appointment of Ms. Clift to the IJC and contesting all decisions taken by the IJC, which he alleged had been illegally constituted. When these cases were transferred to the newly established UNDT, the Appellant filed several motions requesting the judges of the UNDT and the UNAT to recuse themselves. The Appellant argued that all judges faced a conflict of interest, since they had been recruited and recommended for judicial appointment by the IJC, with the

[15] Judge Rose Boyko, Presiding, Judge Mark P. Painter and Judge Kamaljit Singh Garewal.

involvement of Clift. He also requested a blanket removal of all judges appointed by the General Assembly.

Prior to the UNDT hearing, the Appellant brought an interlocutory motion, objecting to a hearing by the UNDT, and requesting that this application be referred to arbitration under the UNCITRAL rules instead. After the Appellant found out that the IJC members had been notified of the proceedings, he filed another interlocutory motion repeating his request. The UNDT rejected both motions in two decisions dated 12 August 2009.[16] On 17 September 2009, the UNDT rejected Campos' challenges to the appointment of Ms. Clift and to the legality of all IJC decisions. Campos appealed all three judgments at the UNAT.

The Tribunal rejected a request from Campos for an oral hearing, since he had the opportunity to make a full written argument on all issues and had not provided the Tribunal with an adequate reason for an oral hearing. The Tribunal found that the SMCC had respected its own procedures in appointing IJC members. The SMCC had made clear that all staff associations would have an equal vote, regardless of the number of staff members they represented. Accordingly, Campos had received three votes, whereas Clift had received ten endorsements. The Tribunal noted that the Secretary-General, not the SMCC, had ultimately appointed Clift. As a result, the Tribunal agreed with the UNDT to reject Campos' challenge to the legality of the appointment of Clift and to all decisions of the IJC. It further rejected Campos' claim that Clift's appointment to the IJC was based on management interference of union affairs, which Campos argued restricted his freedom of association. Furthermore, the Tribunal found it unnecessary to entertain Campos's challenge to the validity of United Nations General Assembly decisions taken on recommendation of the IJC, and it rejected Campos' request for arbitration of his case.

With regard to Campos' request for the recusal of the judges of the UNDT and UNAT and the dissolution of the entire bench on the grounds of conflict of interest, the Tribunal rejected the claim that the alleged management interference in the IJC nomination process had tainted the independence and the impartiality of the new United Nations justice system. The Tribunal noted the limited role of the IJC in judicial appointments, stressing that it merely recommended candidates to the General Assembly, which ultimately appoints. The Tribunal upheld the findings of the UNDT that the nomination of judges by the IJC, with the involvement of Clift, did not constitute a professional relationship between Clift and the judges, and that no meritorious grounds existed for the allegation of appearance of bias, deference or conflict of interest. Finally, the Tribunal agreed with the UNDT that the UNDT President does not have the jurisdiction to dissolve the entire UNDT, as he lacks the statutory authority to dissolve a body created by the General Assembly. For the same reasons, the Tribunal rejected Campos' motion for recusal and dissolution of the UNAT bench.

In conclusion, the Tribunal affirmed the three UNDT judgments on appeal before it and dismissed all of Campos' appeals and his motion for recusal and dissolution of UNAT.

[16] UNDT/2009/005 and UNDT/2009/010, respectively.

2. *Judgment No. 2010-UNAT-005 (30 March 2010): Tadonki* v. *Secretary-General of the United Nations*[17]

Extension of contract—Suspension of action—Receivability of interlocutory appeal—Only appeals against final judgments are generally receivable—United Nations Dispute Tribunal exceeded its authority by ordering the suspension of a decision beyond the deadline for management evaluation

The Respondent (Applicant in first instance), who had worked at the Office for the Coordination of Humanitarian Affairs (OCHA) as head of its office in Harare, Zimbabwe, from 24 March 2008 to 3 September 2009, had filed several suspension of action requests in opposition to a decision not to extend his contract. Eventually, the United Nations Dispute Tribunal (UNDT) ordered the suspension of the decision not to renew his employment.[18] Moreover, it ordered as an interim measure that the Respondent be paid half his salary until the final determination of the case. The Secretary-General appealed this order.

The Tribunal found that, while its Statute does not clarify whether the Tribunal may review appeals against interlocutory decisions, to ensure timely judgment only appeals against final judgments will generally be receivable. However, the Tribunal could hear appeals against decisions by the UNDT that exceeded its authority. In the present case, the Tribunal determined that the UNDT had no authority under article 2(2) of its Statute to order a suspension of the contested decision beyond the deadline for management evaluation. As a consequence, UNDT had exceeded its authority and the Tribunal annulled the UNDT order.

The Tribunal emphasized that its decision in this and two other cases[19] should not be interpreted to mean that all preliminary matters were receivable, as almost none would be. Only when it was clear that the UNDT had exceeded its jurisdiction would a preliminary matter be receivable.

3. *Judgment No. 2010-UNAT-010 (30 March 2010): Tadonki* v. *Secretary-General of the United Nations*[20]

Receivability of an appeal of an interpretation of judgment—Definition of "judgment"—"Judgment" in article 2(1) of the Statute of the United Nations Appeals Tribunal does not include interpretation of judgments—Interpretation of judgment not an avenue for review

On 1 September 2009, the United Nations Dispute Tribunal (UNDT) issued Judgment No. 2009/016 in the case of *Tadonki* v. *Secretary-General of the United Nations* (Tadonki 1).

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[17] Judge Mark P. Painter, Presiding, Judge Inés Weinberg de Roca and Judge Jean Courtial.

[18] *Tadonki* v. *Secretary-General of the United Nations*, Order on an application for suspension of action, UNDT/2009/016 (1 September 2009).

[19] In *Onana* v. *Secretary-General of the United Nations*, Judgment No. 2010-UNAT-008 (30 March 2010), the Tribunal stressed that exceptions to the general principle of the right of appeal should be interpreted narrowly and that these exceptions only apply to jurisdictional matters of a decision ordering the suspension of an administrative decision pending a management evaluation. The Tribunal applied the same reasoning in *Kasmani* v. *Secretary-General of the United Nations*, Judgment No. 2010-UNAT-011 (30 March 2010).

[20] Judge Sophia Adinyira, Presiding, Judge Jean Courtial and Judge Mark P. Painter.

Both parties filed requests for interpretation of the judgment Tadonki 1, and on 16 October 2009, the Organization filed an appeal against the judgment. On 30 October 2009, the UNDT issued its interpretation of judgment Tadonki 1, "UNDT Judgment No. 2009/058", confirming its interim orders. This judgment was subsequently appealed by the Organization, which raised the same errors of law that it had raised in its appeal against the judgment Tadonki 1.

The Tribunal took judicial notice of the fact that it had given judgment on the appeal against the judgment Tadonki 1, whereby it had set that judgment aside. Accordingly, the present appeal was moot. Moreover, as a preliminary matter, the Tribunal noted that the word "judgment" in article 2(1) of the Tribunal's Statute did not include interpretations of judgments. It considered UNDT's "Judgment No. 2009/058" to be merely an explanation of its judgment Tadonki 1, not a fresh decision or judgment within the meaning of article 2(1) of UNAT's Statute. The classification of the interpretation as "Judgment No. 2009/058" by the UNDT Registry was a "misnomer". The Tribunal held that the exercise of interpretation under article 30 of the UNDT Rules of Procedure is not an avenue for review or a basis for fresh judgment on appeal. Accordingly, the appeal to an interpretation of judgment was not receivable.

4. *Judgment No. 2010-UNAT-013 (30 March 2010): Schook* v. *Secretary-General of the United Nations*[21]

Decision not to extend an appointment—Absence of written notification—Receivability of appeal—Necessity of a notification of an administrative decision in writing in order to correctly calculate time limits—Suspension or waiver of time limits in exceptional cases under a transitional arrangement

The Appellant was appointed Principal Deputy to the Special Representative of the Secretary-General of the United Nations Mission in Kosovo, at the rank of Assistant Secretary-General, on 26 April 2006. On 15 December 2007, he received a telephone call from the Under-Secretary-General, DPKO, informing him that his contract would not be extended beyond 31 December 2007. No written administrative decision was communicated to the Appellant.

While serving as Assistant Secretary-General, the Appellant had faced investigations by three separate entities for misconduct, but none of the investigations found any misconduct by him. The Appellant addressed a complaint to the Secretary-General on 14 July 2008, to which he received a reply from the Administrative Law Unit on 6 January 2009. The Appellant then presented his appeal to the Joint Appeals Board (JAB) on 5 February 2009. The UNDT, which took over the case after the dissolution of the JAB, adopted 5 February 2009 as the date of the main appeal. It subsequently held that the appeal was not receivable, as it has not been filed within two months from the date of the decision, 15 December 2007.

The Tribunal considered that, in order to correctly calculate the time-limits, the Appellant should have received a notification of the administrative decision in writing, as required by staff rule 111.2(a). Since the Appellant had never received such a notification

[21] Judge Kamaljit Singh Garewal, Presiding, Judge Sophia Adinyira and Judge Rose Boyko.

in writing, the Tribunal reversed the UNDT judgment and remanded the case back for a fresh decision on the merits.

The Tribunal also noted that the case could have been decided under a transitional arrangement in the UNDT Statute, which allowed the UNDT to suspend or waive deadlines in exceptional cases that were transferred to it from the JAB.

5. *Judgment No. 2010-UNAT-018 (30 March 2010): Mahdi* v. *Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*[22]

Standard of review in disciplinary cases—Totality of evidence

The Appellant was a Communications Technical Assistant (CTA) on a fixed-term appointment, stationed at the Gaza Field Office of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA). UNRWA summarily dismissed the Appellant on 27 July 2003, after a Board of Inquiry investigation reported that the Appellant had committed telephone system fraud by enabling people outside the Gaza Field Office to access the UNRWA telephone extension for international calls; by altering records in the UNRWA billing system; and by failing to bring these issues to the attention of the UNRWA administration.

The Appellant appealed the summary dismissal at the UNRWA Area Staff Joint Appeals Board (JAB) on 8 September 2003. On 16 April 2008, the JAB recommended the Commissioner-General to review the summary dismissal. The JAB noted, *inter alia*, that there had been no clear policy instructions preventing the Appellant from sharing his authorization code for the Direct Inward System Access (DISA) facility with a colleague and that the Appellant had not personally benefited from reducing an invoice. The Commissioner-General rejected the recommendation and upheld the decision of summary dismissal.

On 23 September 2008, the Appellant appealed this decision at the United Nations Administrative Tribunal. Upon the abolition of this tribunal on 31 December 2009, the case was transferred to the United Nations Appeals Tribunal ("the Tribunal").

The Tribunal noted that, in reviewing disciplinary cases, it had to examine: 1) whether the facts on which the disciplinary measure was based had been established; 2) whether the established facts legally amounted to misconduct under the Regulations and Rules; and 3) whether the disciplinary measure applied was proportionate to the offence.

The Tribunal noted that the JAB had confirmed that the facts amounted to misconduct, but that, when making its recommendation, it had failed to assess the totality of evidence. The Tribunal found that, while there was no clear policy or instruction preventing the Appellant from authorizing a colleague to use the DISA facility, the Appellant had violated clear policy by failing to inform his supervisors that he had shared the access code.

The Tribunal concluded that the Commissioner-General had not erred. It consequently dismissed the appeal.

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[22] Judge Inés Weinberg de Roca, Presiding, Judge Sophia Adinyira and Judge Luis María Simón.

6. *Judgment No. 2010-UNAT-019 (30 March 2010): Carranza* v. *United Nations Joint Staff Pension Board*[23]

ARTICLE 24 OF THE REGULATIONS OF THE UNITED NATIONS JOINT STAFF PENSION FUND—RESTORATION OF PRIOR CONTRIBUTORY SERVICE—ARTICLE 24 DOES NOT APPLY TO FAILED ATTEMPTS TO RESTORE PRIOR CONTRIBUTORY SERVICE

The Appellant, a staff member with the United Nations High Commissioner for Refugees (UNHCR), had participated in the United Nations Joint Staff Pension Fund (UNJSPF) from 31 October 1988 through 20 September 1990. At the end of that period, he had opted for a withdrawal settlement as his pension benefit. About seven months later, on 6 May 1991, the Appellant re-entered the UNJSPF, again as a UNHCR staff member. Although he had been eligible to restore his prior period of contributory service, he applied too late and his application was refused.

On 22 December 2006, the General Assembly approved a change to article 24 of UNJSPF's Regulations governing the restoration of prior contributory service. It provided that a participant re-entering the Fund on or after 1 April 2007, who previously had not, or could not have, opted for a periodic retirement benefit following his or her separation from service, could, within one year of the recommencement of participation, elect to restore his or her most recent period of prior contributory service. Any participant in active service who re-entered the Fund before 1 April 2007 and had previously been ineligible to elect to restore prior contributory service owing to the length of such prior service, could do so by an election to that effect made before 1 April 2008.

On the basis of this amendment, the Appellant requested the restoration of his prior period of contributory service. The UNJSPF rejected the request, on the grounds that the amendment was not intended to give a second chance to participants who could have but previously failed to restore prior contributory service. The Appellant appealed this decision at the United Nations Administrative Tribunal. Upon its abolition, the case was referred to the United Nations Appeals Tribunal.

The Tribunal concurred with the reasoning by the Fund and affirmed the decision by the UNJSPF not to restore the Appellant's prior contributory service.

7. *Judgment No. 2010-UNAT-022 (30 March 2010): Abu Hamda* v. *Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*[24]

STANDARD OF REVIEW OF DISCIPLINARY CASES—DISCRETION AND AUTHORITY OF ADMINISTRATIVE BODIES—ADMINISTRATIVE BODIES AND ADMINISTRATIVE OFFICIALS SHALL ACT FAIRLY AND REASONABLY AND COMPLY WITH THE REQUIREMENTS IMPOSED ON THEM BY LAW—NON-INTERFERENCE BY COURTS AND TRIBUNALS IN THE EXERCISE OF DISCRETIONARY AUTHORITY UNLESS THERE IS EVIDENCE OF ILLEGALITY, IRRATIONALITY OR PROCEDURAL IMPROPRIETY—DISPROPORTIONALITY

The Appellant served as Deputy Field Pharmacist in the Syria Field Office of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA)

[23] Judge Rose Boyko, Presiding, Judge Mark P. Painter and Judge Kamaljit Singh Garewal.

[24] Judge Sophia Adinyira, Presiding, Judge Jean Courtial and Judge Kamaljit Singh Garewal.

when, on 15 July 2002, he learned that four boxes of hormonal contraceptive pills had disappeared from the stock. By letters dated 21 July 2002 and 1 December 2003, the Appellant urged the Field Pharmacist to look into the matter. He informed the Chief of the Field Health Programme about the missing stock on 25 April 2004. A subsequent Board of Inquiry (BoI) investigation found that the Appellant had failed to report the loss in a timely fashion; had failed to reprimand subordinate staff and to inform his supervisor; and had submitted a false trimester report to cover up the missing quantity. Another investigation by the Audit and Inspection Department found that the Field Pharmacist, the Appellant's supervisor, had been responsible for the misappropriation. On 16 February 2005, after the Appellant had responded to the allegations, he was removed from his post and demoted to Librarian at the Damascus Training Centre.

The Appellant appealed his demotion to the Joint Appeals Board (JAB). The majority of two Board members found that there was "sufficient and cogent evidence" to support the demotion decision. The third member, however, recommended reconsideration of the decision, or in the alternative, granting the Appellant salary protection in his current post as Librarian. On 12 September 2008, the Commissioner-General decided to uphold the demotion decision, a ruling that the Appellant appealed at the United Nations Administrative Tribunal on 22 November 2008. Upon the abolition of the Administrative Tribunal on 31 December 2009, the case was transferred to the United Nations Appeals Tribunal ("the Tribunal").

As in *Mahdi*,[25] the Tribunal noted that, in reviewing disciplinary cases, it had to examine: 1) whether the facts on which the disciplinary measure was based had been established; 2) whether the established facts legally amounted to misconduct under the Regulations and Rules; and 3) whether the disciplinary measure applied was proportionate to the offence.

The Tribunal found that the facts demonstrated misconduct. As to the proportionality of the decision, the Tribunal noted that disciplinary matters were within the discretion and authority of the Commissioner-General of UNRWA. However, the Tribunal found that it was a general principle of administrative justice that administrative bodies and administrative officials shall act fairly and reasonably and comply with the requirements imposed on them by law. As a normal rule, courts and tribunals would not interfere in the exercise of a discretionary authority unless there was evidence of illegality, irrationality and procedural impropriety. In the present case, UNRWA had not taken into consideration that the missing stock was misappropriated by the Appellant's immediate supervisor and that the latter had intimidated his subordinates during the BoI investigation. Furthermore, the Appellant had never been made aware of the applicable guidelines.

In conclusion, the Tribunal found the disciplinary measure of demotion with loss of salary and transfer disproportionate to the offence. It substituted this decision with a written censure, to be placed in the Appellant's file, and ordered the Commissioner-General of UNRWA to refund to the Appellant all loss of salary that he had suffered.

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[25] *Mahdi* v. *Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East,* Judgment No. 2010-UNAT-018 (30 March 2010), see above.

8. *Judgment No. 2010-UNAT-023 (30 March 2010): Nock* v. *United Nations Joint Staff Pension Board*[26]

ARTICLE 24 OF THE REGULATIONS OF THE UNITED NATIONS JOINT STAFF PENSION FUND—RESTORATION OF PRIOR CONTRIBUTORY SERVICE—ONLY THE MOST RECENT PERIOD OF CONTRIBUTORY SERVICE CAN BE RESTORED

The Appellant had participated in the United Nations Joint Staff Pension Fund (UNJSPF or "Fund") from 1976 to 1984, 1985 to 1987 and in 1988. When she left the Fund in 1984, she had opted for a partial deferred retirement benefit and had commuted part of her benefit into a lump sum one-time payment. Upon leaving in 1988, she had accepted a lump-sum withdrawal settlement.

The Appellant re-entered the fund for a third time in 1998 and was due to retire in July 2010. She had validated a service period from 1997 to 1998, during which she had not been eligible for UNJSPF participation, under article 23 of the Fund's Regulations, and had restored her second participation period from 1985 to 1987.

On 22 December 2006, the General Assembly approved a change to article 24 of UNJSPF's Regulations governing the restoration of prior contributory service. It provided that a participant re-entering the Fund on or after 1 April 2007, who previously had not, or could not have, opted for a periodic retirement benefit following his or her separation from service, could, within one year of the recommencement of participation, elect to restore his or her most recent period of prior contributory service. Any participant in active service who re-entered the Fund before 1 April 2007 and was previously ineligible to elect to restore prior contributory service owing to the length of such prior service, could do so by an election to that effect made before 1 April 2008.

On the basis of this amendment, the Appellant requested the restoration of her first participatory period from 1976 to 1984. The Fund refused her request, arguing that her first participation period was not her "most recent period of contributory service". The Appellant challenged this decision, advancing humanitarian considerations, at the United Nations Administrative Tribunal, which, upon its abolition, transferred the case to the United Nations Appeals Tribunal ("the Tribunal").

The Tribunal found that restoration was an exceptional benefit and that it could not be extended by analogy. Since the Appellant had not provided legal reasoning for her request, and since granting the appeal would be in violation of UNJSPF's Regulations, the Tribunal dismissed the appeal and upheld the ruling by the Fund.

9. *Judgment No. 2010-UNAT-024 (30 March 2010): Haniya* v. *Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*[27]

TERMINATION OF SERVICE CONNECTED TO ANY TYPE OF INVESTIGATION OF THE STAFF MEMBER'S MISCONDUCT MUST BE REVIEWED AS A DISCIPLINARY MEASURE—STANDARD OF REVIEW FOR DISCIPLINARY MEASURES—PROPORTIONALITY—POSITION OF TRUST OF A GUARD

At the relevant time, the Appellant served as a guard at the Microfinance and Microenterprise Programme of the United Nations Relief and Works Agency for Palestine Refu-

[26] Judge Luis María Simón, Presiding, Judge Inés Weinberg de Roca and Judge Sophia Adinyira.

[27] Judge Luis María Simón, Presiding, Judge Inés Weinberg de Roca and Judge Sophia Adinyira.

gees in the Near East (UNRWA) in Gaza. On 28 February 2006, the Appellant was separated "in the interest of the Agency", after he had confessed to have made a large number of private international telephone calls using a UNRWA telephone line. After an unsuccessful request for review of the decision and a failed appeal to the UNRWA Area Staff Joint Appeals Board (JAB), the Appellant appealed to the United Nations Administrative Tribunal on 14 September 2008. Upon the abolition of the tribunal on 31 December 2009, the case was transferred to the United Nations Appeals Tribunal ("the Tribunal").

The Tribunal considered that when a termination of service was connected to any type of investigation of a staff member's possible misconduct, it should be reviewed as a disciplinary measure. Accordingly, the Tribunal applied the standard of review applicable to a disciplinary measure, by examining: 1) whether the facts on which the sanction was based had been established; 2) whether the established facts qualified as misconduct; and 3) whether the sanction was proportionate to the offence.

The Tribunal was not persuaded that the Appellant's "family problems" should justify his acts and found that misconduct had occurred. With regard to proportionality, the Tribunal noted that, as a guard, the Appellant had failed to respect his position of trust. Accordingly, it considered the sanction imposed not disproportionate to the offence and dismissed the appeal.

10. Judgment No. 2010-UNAT-025 (30 March 2010): Doleh v. *Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*[28]

Termination of service—Need to verify facts before raising a plea that an appeal is time-barred—Judicial review of administrative acts on grounds of illegality, irrationality or procedural impropriety—Proportionality—Reinstatement—Compensation

At the relevant time, the Appellant was employed by the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) as a Medical Officer at the Marka Camp Health Centre. On 22 June 2006, the UNRWA Director ordered a termination of service of the Appellant, after reports that she had been involved in forging information and changing data on ante-natal and maternal health records of a patient that had subsequently died.

While the Appellant's request for review was dismissed on 5 July 2006, the UNRWA Area Staff Joint Appeals Board (JAB) considered the decision to terminate Appellant's service to be disproportionate. The Commissioner-General rejected the recommendation of the JAB, upon which the Appellant filed an appeal at the United Nations Administrative Tribunal. Upon the abolition of the tribunal on 31 December 2009, the case was transferred to the United Nations Appeals Tribunal (the Tribunal).

The Tribunal first observed that it was fairly common for the Administration to raise pleas of appeals being time-barred without verifying the facts, for example whether an extension had been granted. This practice, the Tribunal noted, deserved to be deprecated in the strongest possible terms.

[28] Judge Kamaljit Singh Garewal, Presiding, Judge Sophia Adinyira and Judge Rose Boyko.

On the merits, the Tribunal determined that it was fully empowered to undertake judicial review of an administrative act. While it considered the principal grounds for judicial review to be illegality, irrationality and procedural impropriety, it noted that in exceptional cases the doctrine of proportionality should be invoked. The Tribunal found that the Appellant had never been involved with the treatment of the deceased, but that she had merely made some changes to the records that were unrelated to the patient's death.

In conclusion, the Tribunal allowed the appeal and set aside the decision to terminate the Appellant's service as disproportionate. It ruled that the Appellant had to be re-instated and had to be warned to be careful in the future. In the alternative, UNRWA could elect to pay the Appellant compensation equivalent to two years' net base pay.

11. Judgment No. 2010-UNAT-031 (30 March 2010): Jarvis v. *Secretary-General of the United Nations*[29]

Admissibility of appeal—Home-leave travel—Lump-sum payment—Negotiability of rules—Forfeiture of right to appeal

The Appellant, a staff member of the International Criminal Tribunal for the former Yugoslavia (ICTY), challenged the determination by the ICTY administration of the lump-sum amount for her home-leave travel to Adelaide, Australia. Together with two colleagues, she had accepted the lump-sum while explicitly reserving her right to appeal. The United Nations Dispute Tribunal (UNDT) rejected her appeal as inadmissible, arguing that the application of the rules by the administration was non-negotiable and that the Appellant had forfeited her right to appeal by accepting the lump-sum payment.

The Tribunal noted that the administration had recognized that the lump-sum payment was an estimate and not a final calculation. It also found no document in the case record which provided a detailed calculation of the lump-sum or how the travel unit had arrived at that amount. Moreover, the applicable staff rules did not define what constituted a "full economy-class fare by the least costly scheduled air carrier". As a consequence, the Tribunal determined that the parties had not been in a situation governed by rules in which the administration could only apply them and the staff member could only accept or reject the lump-sum payment proposed. Accordingly, the Appellant had not forfeited any right of appeal by accepting the lump-sum payment.

In conclusion, the Tribunal annulled the UNDT decision and remanded the case to the UNDT for a fresh judgment on the merits.

12. Judgment No. 2010-UNAT-032 (30 March 2010): Calvani v. *Secretary-General of the United Nations*[30]

Administrative leave without pay—Suspension of execution—Production of evidence—Measures of inquiry are not receivable for appeal

Following a critical audit report, the Respondent (Applicant in first instance), the Director of the United Nations Interregional Crime and Justice Research Institute, was informed by the Under-Secretary-General for Management that the Secretary-General had decided to

[29] Judge Inés Weinberg de Roca, Presiding, Judge Jean Courtial and Judge Mark P. Painter.

[30] Judge Jean Courtial, Presiding, Judge Inés Weinberg de Roca and Judge Mark P. Painter.

place him on administrative leave without pay. The Respondent requested that this decision be submitted to a management evaluation and filed an application with the United Nations Dispute Tribunal, requesting for a suspension of execution of the decision.

Following an oral hearing, the Dispute Tribunal in Geneva ordered the Administration to submit a signed confirmation from the Secretary-General that he had made the decision to place the Respondent on administrative leave without pay. The Secretary-General appealed this order, arguing that the Dispute Tribunal, in considering that no evidence had been submitted establishing the authority for the contested decision, despite a letter signed by the Deputy Secretary-General to that extent, disregarded General Assembly resolution 52/12 B, setting out the responsibilities of the Deputy Secretary-General in the management of the Secretariat.

The United Nations Appeals Tribunal found that, in the present case, the Dispute Tribunal had exercised its discretionary authority to decide on a measure of inquiry, the necessity of which it had sole authority to assess. The Tribunal did not see any basis in the internal system of justice of the Organization, or that it was in the interest of that system of justice, for considering an appeal against a simple measure of inquiry receivable. Consequently, the Tribunal rejected the appeal.

13. Judgment No. 2010-UNAT-035 (1 July 2010): Crichlow v. *Secretary-General of the United Nations*[31]

Appeal must demonstrate error in law or fact of United Nations Dispute Tribunal—By paying the judgment award, the Secretary-General accepts the judgment of the United Nations Dispute Tribunal and can no longer appeal the judgment

The Appellant (Respondent on Cross-Appeal) had been a staff member of the United Nations Population Fund (UNFPA). She had requested administrative review of a decision to reassign her to another post, and later appealed that decision at the United Nations Dispute Tribunal (UNDT). The Appellant further complained that she had been treated negatively by her former supervisor. According to her, the reassignment constituted a retaliation for a past incident, in which the Appellant had refused to record as present a staff member that had been allowed by her supervisor to unofficially use his excess leave days.

The UNDT limited the Appellant's claim to the decision to reassign her, as the other complaints had not been part of her initial request for administrative review. While the Dispute Tribunal dismissed the application, it found that the Appellant had been aggrieved in her work place. By way of compensation, it awarded her an amount of one month's net base salary. Subsequently, the Appellant and the Secretary-General filed an appeal and cross-appeal, respectively.

The Secretary-General argued that the compensation awarded constituted exemplary or punitive damages, which were explicitly prohibited by the UNDT Statute. While the Statute allowed for moral damages, the Secretary-General challenged the basis on which the damages had been awarded in this case. He also maintained that UNFPA had already

[31] Judge Inés Weinberg de Roca, Presiding, Judge Mark P. Painter and Judge Kamaljit Singh Garewal.

corrected its own failure, by providing administrative review of the decision and by providing a full explanation of the reasons for the reassignment.

The Appeals Tribunal dismissed the Appellant's appeal. It found that the Appellant had not demonstrated that the UNDT had erred in law or fact. The Tribunal emphasized that the appeals procedure was of a corrective nature and that it was not an opportunity for a party to reargue his or her case.

On cross-appeal, the Tribunal noted that the Secretary-General had already paid the damages, thereby accepting the UNDT judgment. The cross-appeal was therefore moot.

In conclusion, the Tribunal dismissed both the appeal and the cross-appeal.

14. Judgment No. 2010-UNAT-059 (1 July 2010): Warren v. *Secretary-General of the United Nations*[32]

Jurisdiction to award interest—Purpose of compensation—Absence of express power not decisive—Relevance of legislative history—Interest at U.S. Prime Rate

In *Warren*, Judgment No. UNDT/2010/015 dated 27 January 2010, the United Nations Dispute Tribunal (UNDT) had concluded that the amount paid to the Respondent (Applicant in first instance) as his lump sum for home leave travel was incorrectly calculated. The UNDT had ordered the Secretary-General to pay the Respondent the difference between the amount of the lump-sum entitlement as determined by the UNDT and the amount already paid pursuant to the Organization's calculation. The UNDT had also ordered the Secretary-General to pay the Respondent interest on the difference at the rate of 8 per cent per year, from 25 March 2008 (the due date) to the date of payment.

The Secretary-General appealed this decision, submitting that the UNDT erred in law by implicitly finding that it had the power to award interest in the normal course of ordering compensation. The Secretary-General pointed out that article 10 of the UNDT Statute was silent on the power to award interest, and that its legislative history demonstrated that, while an explicit grant of power to award interest had been considered by the General Assembly, it had not been included in the final Statute. The Secretary-General also noted that the UNDT's predecessor, the United Nations Administrative Tribunal, had awarded pre-judgment interest only in exceptional cases.

The United Nations Appeals Tribunal (UNAT) deemed the absence of an express power to award interest in the UNDT Statute not decisive and considered the legislative history irrelevant in the face of the words of the Statute. It reasoned that the very purpose of compensation was to place a staff member in the same position he or she would have been in had the Organization complied with its contractual obligations. Accordingly, the Tribunal found that, to ensure proper compensation, the UNDT and UNAT should have the jurisdiction to award interest.

With regard to the rate of interest, the Tribunal noted that the UNDT had not adopted a uniform approach. The Tribunal decided to award interest at the U.S. Prime Rate applicable at the due date of the entitlement (5.25 per cent in the case at hand). The interest should be calculated from the date of the entitlement to the date of payment of the compensation

[32] Judge Inés Weinberg de Roca, Judge Jean Courtial, Judge Sophia Adinyira, Judge Mark P. Painter, Judge Kamaljit Singh Garewal, Judge Rose Boyko and Judge Luís María Simón.

awarded by the UNDT. The Tribunal held that if the judgment was not executed within 60 days, 5 per cent should be added to the U.S. Prime Rate from the date of expiry of the 60-day period to the date of payment of the compensation.

The Tribunal concluded that the UNDT had not erred in finding that it had the power to order the payment of interest, but that it had erred in its determination of the applicable interest rate. Judge Boyko appended a dissenting opinion, finding that the power to impose interest had been deliberately and specifically excluded from the UNDT draft statute. Accordingly, she found that the UNDT and the UNAT lacked the power to award interest.

15. Judgment No. 2010-UNAT-062 (1 July 2010): Bertucci v. *Secretary-General of the United Nations*[33]

Jurisdiction to receive interlocutory appeals—Only appeals against final judgment are generally receivable—Appeals against orders are moot after the court of first instance has given final judgment—Production of documents—Privilege—Interest of justice to shorten time and page limits for interlocutory appeals

The Respondent (Applicant in first instance) had challenged his non-selection for the post of Assistant Secretary-General in the Department of Economic and Social Affairs (ASG/DESA) and a decision to withhold USD 13,839 in entitlements upon his retirement from the United Nations in 2008, pending the conclusion of disciplinary proceedings against him. The cases were jointly considered by the United Nations Dispute Tribunal (UNDT).

On 17 September 2009, Judge Adams ordered the Secretary-General to produce documents relating to the appointment of the ASG/DESA.[34] The Secretary-General declined to disclose the documents on the grounds that the issue was non-justiciable, confidential and immune from disclosure on the grounds of privilege. The judge re-ordered the Secretary-General to produce the documents on 3 March 2010[35] and on 8 March 2010.[36] On 8 March 2010, Judge Adams decided that the Secretary-General, in light of his disobedience, was not entitled to appear before him in the matter. On 9 March 2010, the judge rejected a request by the Secretary-General for an adjournment of the hearing and ordered the officer who made the decision not to comply with Order No. 40 to appear before him the next morning. When the Secretary-General notified the UNDT that the officer would not appear before the Dispute Tribunal, the judge directed the Secretary-General to supply within 24 hours the name and contact details of the relevant officer.[37]

On 24 March 2010, the Secretary-General applied to the United Nations Appeals Tribunal (UNAT) for an extension of the time-limit to 26 April 2010 and for leave to file a 50-page consolidated appeal against the five orders. The Appeals Tribunal denied the request for the extension of the time-limit, and set the page length of the appeal and

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[33] Judge Inés Weinberg de Roca, Judge Jean Courtial, Judge Sophia Adinyira, Judge Mark P. Painter, Judge Kamaljit Singh Garewal, Judge Rose Boyko and Judge Luís María Simón.

[34] Order No. 124 (17 September 2009).

[35] Order No. 40 (NY/2010) (3 March 2010): Ruling on Production of Documents.

[36] Order No. 42 (NY/2010) (8 March 2010): Ruling on Disobediance [*sic*] of Order.

[37] Order No. 46 (NY/2010) (10 March 2010).

answer to five pages in each case. The Secretary-General subsequently appealed all orders on 12 April 2010.

In considering whether the appeals against the orders were receivable, the Tribunal reiterated its earlier findings that most interlocutory decisions were not receivable, except in cases where the UNDT had clearly exceeded its jurisdiction on competence.[38] The Tribunal stated that it would not interfere lightly with the broad discretion of the UNDT, as court of first instance, in the management of the cases. The possibility of interlocutory appeal would prevent the UNDT from rendering timely judgments, which was one of the goals of the new system of administration of justice. In this light, the Tribunal considered that it had been in the interest of justice to shorten the time and page limits for filing appeals against interlocutory decisions.

In the case under review, the Tribunal did not see any reason to depart from the general rule that only appeals against final judgments were receivable. As the UNDT had rendered its final judgments,[39] the appeals against the orders had become moot. For this reason, the Appeals Tribunal declined to entertain the question of privilege and noted that any claims regarding the Orders could be raised by the Secretary-General in an appeal against the final judgments.

In conclusion, the Tribunal held the interlocutory appeals not receivable and dismissed the appeal. Judge Boyko appended a dissenting opinion, in which she argued that privilege, if claimed, is a threshold issue and must be determined before the trial may proceed. Judge Boyko noted that the production of truly privileged evidence could not be ordered without destroying the privilege. Moreover, she found that a trial judge would err in drawing an adverse inference against the non-production of privileged material.

16. Judgment No. 2010-UNAT-087 (27 October 2010): Liyanarachchige v. *Secretary-General of the United Nations*[40]

Summary dismissal—Use of anonymous witness statements—Requirements of adversarial proceedings and due process—Presumption of innocence—Disciplinary measures may not be based solely on anonymous witness statements

In February 2007, the Appellant, an official with the United Nations Operation in Côte d'Ivoire (UNOCI), had been identified as a client by two presumed victims of human trafficking and forced prostitution, V01 and V03, who remained anonymous. Based on a subsequent report of the Office of Internal Oversight Services (OIOS), the Appellant was

[38] See *Tadonki* v. *Secretary-General of the United Nations*, Judgment No. 2010-UNAT-005 (30 March 2010);*Onana* v. *Secretary-General of the United Nations*, Judgment No. 2010-UNAT-008 (30 March 2010); *Kasmani* v. *Secretary-General of the United Nations*, Judgment No. 2010-UNAT-011 (30 March 2010); and *Calvani* v. *Secretary-General of the United Nations*, Judgment No. 2010-UNAT-032 (30 March 2010). The Tribunal further applied the finding in *Bertucci* in *Wasserstrom* v. *Secretary-General of the United Nations*, Judgment No. 2010-UNAT-060 (1 July 2010), where it reiterated the general rule that only appeals against final judgments are receivable. In particular, the Tribunal found that questions requiring adjudication on the merits could not be subject to interlocutory appeal.

[39] *Bertucci* v. *Secretary-General of the United Nations,* Judgment No. UNDT/2010/080 (3 May 2010); *Bertucci* v. *Secretary-General of the United Nations,* Judgment No. UNDT/2010/094 (14 May 2010); *Bertucci* v. *Secretary-General of the United Nations,* Judgment No. UNDT/2010/117 (30 June 2010).

[40] Judge Jean Courtial, Presiding, Judge Kamaljit Singh Garewal, Judge Rose Boyko.

charged with sexual exploitation; abuse of Organization property; and conduct incompatible with the obligations of all officials of the United Nations and the norms of conduct expected of an international civil servant. Upon receipt of the Appellant's written observations, the Secretary-General summarily dismissed the Appellant on 8 May 2009.

The Appellant challenged his summary dismissal at a hearing of the United Nations Dispute Tribunal (UNDT) in Nairobi. Five witnesses were called upon to testify. V01 and V03 did not appear, as they had been repatriated to their home country. On 9 March 2010, the UNDT found that the identification of the Appellant by V01 and V03, through the use of several photographs collected by an OIOS investigator, had been sufficient, despite some inconsistencies in the testimony of the witnesses regarding the physique of the Appellant. It upheld the summary dismissal as appropriate.

On appeal, the Tribunal determined that the UNDT had erred in law by violating the requirements of adversarial proceedings and due process, and emphasized that the presumption of innocence must be respected in a system of administration of justice. It held that, while the use of anonymous witness statements should not be excluded from disciplinary matters on principle, the imposition of a disciplinary measure may not be based solely on anonymous witness statements, even in exceptional cases or when in the interest of combating reprehensible behaviour.

In conclusion, the Tribunal quashed the judgment of the UNDT and annulled the summary dismissal by the Secretary-General. It set an amount equivalent to 12 months of net base salary as compensation, which the Secretary-General could choose to pay instead of re-instating the Appellant.

Judge Boyko appended a separate and concurring opinion to the judgment, emphasizing the importance of the ability of a staff member to challenge the evidence against him or her.

17. Judgment No. 2010-UNAT-092 (29 October 2010): Mmata v. *Secretary-General of the United Nations*[41]

Separation of service—Exceptional circumstances—Compensation exceeding two years' net base salary—Article 10(5)(b) of the United Nations Dispute Tribunal does not require a formulaic articulation of aggravating factors—Evidence of aggravating factors warrants increased compensation—The United Nations Dispute Tribunal has authority to award interest—The applicable interest rate is the U.S. Prime Rate

The Respondent (Applicant in first instance) served as an Operation Manager at the office of the United Nations Children's Fund (UNICEF) in Windhoek, Namibia, after having worked for 13 years at the UNICEF office in Nairobi. After his transfer in 2003, he and his wife had visited the United Nations Office in Nairobi (UNON) 11 times using their UNON identity cards, even though Kenya was no longer his duty station.

In 2009, UNICEF sought the voluntary resignation of the Respondent due to poor performance of the Windhoek office. When the Respondent refused to resign, he was charged with abuse of privileges and immunities and with abuse of authority, for the unau-

[41] Judge Rose Boyko, Presiding, Judge Sohpia Adinyira and Judge Luis María Simón.

thorized use of UNON identity cards. He was subsequently separated from service on 1 September 2009.

The Respondent challenged the disciplinary measure and the United Nations Dispute Tribunal (UNDT) found that the Secretary-General had unfairly dismissed him.[42] The UNDT noted that the identity card incident had been used to force the Respondent to resign and ordered the Respondent's reinstatement. In the event that reinstatement would not be possible, the UNDT ordered the Secretary-General, "in the exceptional circumstances of this case", to compensate the Respondent for loss of earnings from the date of his separation from service to the date of the judgment and an additional two years' net base salary, both with 8 per cent interest.

On appeal, the Secretary-General argued that the UNDT had failed to specify the exceptional circumstances, required by article 10(5)(b) of the UNDT Statute, for ordering compensation beyond two years' net base salary. Moreover, the Secretary-General challenged the finding that exceptional circumstances existed in the case, and contended that the UNDT had exceeded its competence by awarding interest.

The Appeals Tribunal held that article 10(5)(b) did not require a formulaic articulation of exceptional circumstances, but rather that it demanded evidence of aggravating factors that warranted higher compensation. It found that the UNDT's findings of fact demonstrated a blatant harassment and an accumulation of aggravating factors, which warranted an increased award. Accordingly, the Tribunal upheld the determination of the compensation by the UNDT.

With regard to the interest, the Tribunal reiterated its conclusion in *Warren*,[43] namely that the UNDT had the authority to award interest, but only at the U.S. Prime Rate, with an extra five per cent if the judgment was not executed within 60 days of its issuance.

In conclusion, the Tribunal dismissed the appeal as to the compensation and set the applicable interest rate to the U.S. Prime Rate.

18. Judgment No. 2010-UNAT-100 (29 December 2010): Abboud v. *Secretary-General of the United Nations*[44]

Instigation of disciplinary charges against a staff member is a privilege of the Organization—Lack of economic loss or harm—An award of damages requires reasons, facts and law on which it is based

On 8 July 2008, the Respondent (Applicant in first instance) had been interviewed for a P-5 position in the Department for General Assembly and Conference Management (DGACM) by a five-member panel, including the Special Assistant (SA) of the Under-Secretary-General for DGACM. The Respondent subsequently complained about alleged inappropriate conduct by the SA during the interview, including inappropriate language, sarcastic observations and maintaining an intimidating posture, and requested an investigation. When he was informed that no preliminary investigation would be undertaken, the

[42] *Mmata* v. *Secretary-General of the United Nations*, Judgment No. UNDT/2010/53 (31 March 2010).

[43] *Warren* v. *Secretary-General of the United Nations*, Judgment No. 2010-UNAT-059 (1 July 2010).

[44] Judge Inés Weinberg de Roca, Presiding, Judge Jean Courtial and Judge Mark P. Painter.

Respondent unsuccessfully requested a suspension of action and an administrative review of the decision not to undertake a preliminary investigation. The Respondent then filed an application with the Joint Appeals Board (JAB). Upon abolition of the JAB, the case was transferred to the United Nations Dispute Tribunal (UNDT).

The UNDT found that a preliminary investigation should have taken place. While acknowledging that the Respondent had not suffered any economic loss, the UNDT determined that the violation of the Respondent's rights to a fair consideration of his request for an investigation entitled him to compensation in the amount of USD20,000.[45] The Secretary-General appealed this decision, arguing that the UNDT had erred in law and in fact and had exceeded its competence by going beyond the appropriate scope of judicial review applicable to a review of the Secretary-General's discretionary authority in disciplinary matters.

On appeal, the Tribunal found that, as a general principle, the instigation of disciplinary charges against a staff member was the privilege of the Organization itself, and that it was not legally possible to compel the Administration to do so. However, the Tribunal found that several provisions in the Bulletins and Administrative Instructions of the Secretary-General established an obligation on the Administration to investigate allegations of unsatisfactory conduct by staff members. No concrete action had been taken in order to comply with these provisions. Accordingly, the Tribunal ruled that the UNDT had not exceeded its competence in the present case and upheld the UNDT's findings on the merits.

With respect to the alleged errors in fact, the Tribunal noted that the Secretary-General presented evidence which had not been part of the case record of the UNDT. As the Secretary-General had not requested leave to have it admitted on appeal, nor had demonstrated, in line with article 10(2) of the Tribunal's Statute, exceptional circumstances warranting the admission of additional evidence on appeal, the Tribunal refused to consider this evidence and solely relied on the factual findings of the UNDT.

With regard to the damages, the Tribunal observed that no economic loss or actual damage had occurred. Accordingly, it determined that the UNDT had awarded damages—a relief not requested by the Respondent—without stating the facts and law underlying its decision, in violation of article 11 of the UNDT Statute. As a result, it vacated the award of damages.

In conclusion, the Tribunal granted the appeal in part and rescinded the UNDT judgment to the extent that it awarded damages to the Respondent.

[45] *Abboud* v. *Secretary-General of the United Nations*, Judgment No. UNDT/2010/001 (6 January 2010).

C. Decisions of the Administrative Tribunal of the International Labour Organization[46]

1. *Judgment No. 2867 (3 February 2010): A.T.S.G.* v. *International Fund for Agricultural Development (IFAD)*[47]

Status of staff of an organ established under an international convention and hosted by an international organization pursuant to a memorandum of understanding—Jurisdiction of the Tribunal

The Global Mechanism, established by the United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification,

[46] 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 following 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 Organisation 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.

[47] Ms. Mary G. Gaudron, President, Mr. Seydou Ba, Vice-President, Mr. Giuseppe Barbagallo, Ms. Dolores M. Hansen and Mr. Patrick Frydman, Judges.

Particularly in Africa, and the International Fund for Agricultural Development ("the Fund") had concluded a Memorandum of Understanding on 26 November 1999, by which Fund undertook "to house the Global Mechanism for the administrative operations of such Mechanism". A dispute arose over the status of the staff of the Global Mechanism.

The Tribunal found that personnel of the Global Mechanism were staff members of the Fund and that the decisions of the Managing Director of the Global Mechanism in relation to them were, in law, decisions of the Fund. Administrative decisions giving rise to grievances were therefore subject to internal review and appeal in the same manner and for the same reasons as the decisions concerning other staff members of the Fund. Such grievances could also be brought before the Tribunal in the same way and for the same reasons as the decisions concerning other staff members of the Fund.

The decision was subsequently submitted to the International Court of Justice for an advisory opinion under article XII of the Statute of the Tribunal.[48] By the end of 2010, the case remained pending.

2. *Judgment No. 2893 (3 February 2010): F.A.M.L.* v. *European Organisation for the Safety of Air Navigation (Eurocontrol Agency)*[49]

Right to be heard—Complainants should be free to present their case, either in writing or orally—Appeal bodies are not required to offer complainants the possibility to present their cases both in writing and orally

The Complainant had filed a claim over statutory compensation denied to him. On appeal, he contended that, as he had not been informed of the date of the Eurocontrol Joint Dispute Committee meeting at which his internal appeal was examined, he had not been given an opportunity to put his case himself or to present oral submissions through counsel, and that he had thus been denied his right to be heard.

The Tribunal rejected that argument. Neither the legal provisions governing the Eurocontrol Joint Dispute Committee, nor any general principle applicable to such an appeal body required that a Complainant be given an opportunity to present oral submissions in person or through a representative. As the Tribunal had already had occasion to state,[50] all that the right to a hearing required was that the Complainant should be free to put his case, either in writing or orally; the appeal body was not obliged to offer him both possibilities.

As the Committee had considered that it had gleaned sufficient information about the case from the parties' written submissions and documentary evidence, it was under no obligation to invite the Complainant to put his case orally, or indeed to accede to any request to that effect. Accordingly, the Tribunal dismissed the complaint.

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[48] Adopted by the International Labour Conference on 9 October 1946 and amended by the Conference on 29 June 1949, 17 June 1986, 19 June 1992, 16 June 1998 and 11 June 2008. Available from http://www.ilo.org/public/english/tribunal/about/statute.htm.

[49] Mr. Seydou Ba, Vice-President, Mr. Claude Rouiller and Mr. Patrick Frydman, Judges.

[50] See, for example, In re *Thadani,* Judgment No. 623 (5 June 1984).

3. *Judgment No. 2899 (3 February 2010): N.W.* v. *European Free Trade Association (EFTA)*[51]

Right to be heard—Right to jurisdictional appeal—Undue payments are subject to recovery—Relevant circumstances must be taken into account when the Organization requests reimbursement of an undue payment

The Complainant had received written censure, a disciplinary action issued because of the improper receipt of allowances, which the Complainant had later paid back. The Secretary-General considered that this reimbursement had settled the dispute and refused to hear the Complainant's internal appeal.

On appeal, the Tribunal quashed the decision by the Secretary-General, finding a major procedural flaw. The Tribunal held that staff members of international organizations were guaranteed both the right to be heard and the right of appeal to a judicial authority. A staff member should not in principle be denied the possibility of having a contested decision reviewed by the competent appeals body, unless the individual concerned had waived the right of internal appeal.[52]

With regard to the recovery of undue payments, the Tribunal recalled that, by virtue of a general principle of law, any sum paid in error was subject to recovery, save where such recovery was time-barred.[53] Nevertheless, an international organization, having mistakenly paid out a sum to a staff member, must take into consideration any circumstance that would make the request for reimbursement of the amount in question, or of less than the full amount, inequitable or unfair. Among the relevant circumstances in this regard were the good or bad faith of the individual, the nature of the error, the respective responsibilities of the organization and the staff member in causing the error, and the inconvenience caused to the staff member by the recovery demanded as a result of an error attributable to the organization.[54]

4. *Judgment No. 2900 (3 February 2010): D.Q. and D.M.W.* v. *European Telecommunications Satellite Organization (EUTELSAT)*[55]

Jurisdiction of the Administrative Tribunal—The Tribunal alone can determine whether it is competent to hear a dispute—The Tribunal may only hear disputes between officials and the international organizations employing them

In 1990, EUTELSAT had established a limited liability company under French law, Eutelsat S.A. In 2001, the rights and obligations arising from the pension scheme for

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[51] Ms. Mary G. Gaudron, President, Mr. Seydou Ba, Vice-President and Mr. Patrick Frydman, Judge.

[52] See *C.T.* v. *Agency for International Trade Information and Cooperation (AITIC)*, Judgment No. 2781 (4 February 2009), paragraph 15 of the considerations.

[53] See In re *Zayed (Najia)*, Judgment No. 1195 (15 July 1992), paragraph 3 of the considerations; *H.B.* v. *Customs Co-operation Council (CCC)*, Judgment No. 2565 (12 July 2006), paragraph 7(a) of the considerations.

[54] See In re *Durand*, Judgment No. 1111 (3 July 1991), paragraph 2 of the considerations; and In re *Gera*, Judgment No. 1849 (8 July 1999), paragraph 16 and 18 of the considerations.

[55] Mr. Seydou Ba, Vice-President, Mr. Claude Rouiller and Mr. Patrick Frydman, Judges.

EUTELSAT staff members had been transferred to Eutelsat S.A. The present case arose when Complainants contested the new method for the adjustment of pensions.

EUTELSAT refused to rule on the substance of the Complainants' request for review and invited them to file a complaint directly with the Tribunal, promising not to challenge the Tribunal's jurisdiction. The Tribunal ruled, however, that it alone could determine whether it was competent to hear a dispute, and that it was by no means bound in this respect by the opinions expressed by the parties in the course of the proceedings. In accordance with article II, paragraph 5, of its Statute, the Tribunal could hear only disputes between officials and the international organizations employing them. In the case at hand, the Tribunal found that the dispute in question was not between the Complainants and the international organization EUTELSAT, but between them and the French company Eutelsat S.A. As a result, the Tribunal concluded that the dispute did not fall under its jurisdiction and it dismissed the complaints.

5. *Judgment No. 2915 (8 July 2010): H.L.* v. *World Intellectual Property Organization (WIPO)*[56]

Compulsory retirement age—Vested rights—Principle of equal treatment—Distinction on the basis of entry into service—An obligation corresponding to a vested right can be implemented without requiring continuing consent—Lack of choice in choosing one's retirement age is not discriminatory if others cannot choose their retirement age either, even if different age limits apply

The Complainant had entered into service of WIPO prior to 1990. In November 1990, the compulsory retirement age was raised from 60 to 62 for WIPO staff who entered the Organization after that time. In 2006, the Complainant sought to extend her compulsory retirement age from 60 to 62, but the Organization refused to do so. The Complainant considered the relevant staff regulation to be inherently discriminatory and filed several grievances, including the complaint that the differentiation between staff members on the basis of the time of entry into service violated a vested right of retirement and the principle of equal treatment.

The Complainant contended that a vested right is a "right complete and consummated and of such a character that it cannot be divested without the consent of the person to whom it belongs". Accordingly, she argued that continuing consent was necessary to support a compulsory retirement age of 60 for staff members who entered into service prior to 1 November 1990. The Complainant argued that those staff members "should have the choice of either retaining their vested right [to retire at 60] or [. . .] availing themselves of the [right to retire at] 62". The Tribunal rejected this argument. It considered that while a vested right could not be divested without the consent of the person to whom it belongs, a corresponding condition or obligation (in this case, the condition or obligation to retire at 60) can be implemented without requiring continuing consent.

With regard to the principle of equal treatment, the Complainant argued, in line with earlier case law,[57] that the date of entry into service was not a relevant difference warrant-

[56] Ms. Mary G. Gaudron, President, Mr. Guiseppe Barbagallo and Ms. Dolores M. Hansen, Judges.

[57] See *Z.P.* v. *World Health Organization*, Judgment No. 2313 (4 February 2004).

ing different treatment. For this reason, she maintained that she should have had the choice to retire either at 60 or 62. The Tribunal considered that the inability to choose her retirement age did not constitute inequality, because staff members who entered into service after 1990 had no more ability to make that choice than staff members joining before 1990. It therefore rejected both claims.

6. *Judgment No. 2916 (8 July 2010): R.R.J.* v. *International Telecommunication Union (ITU)*[58]

Non-renewal of contract for reasons of poor performance—A notification of non-renewal constitutes a decision that may be challenged before the Tribunal—A decision of non-renewal is a discretionary decision that may only be reviewed on limited grounds—In cases of non-renewal for poor performance, the Tribunal will not substitute its own assessment for that of the organization concerned—An organization may not in good faith end an appointment for poor performance without warning the staff member to do better—An organization in good faith must observe its performance appraisal rules in order to rely on poor performance for a decision that adversely affects a staff member

The Complainant contested a decision not to renew her fixed-term appointment for reasons of poor performance. The Tribunal recalled relevant case law, which indicated, *inter alia*, that a notification of non-renewal of a contract was a decision that could be challenged before the Tribunal.[59] At the same time, the Tribunal found that a decision not to renew a contract was a discretionary decision that could only be reviewed on limited grounds, namely "that it was taken without authority, or in breach of a rule of form or of procedure, [. . .] or if some essential fact was overlooked, or if clearly mistaken conclusions were drawn from the facts, or if there was abuse of authority".[60] The Tribunal further recalled that where the ground for non-renewal is unsatisfactory performance, the Tribunal would not substitute its own assessment for that of the organization concerned.[61] At the same time, an organization could not in good faith end an appointment for poor performance without first warning the staff member and giving him or her an opportunity to do better.[62] The Tribunal held that the duty of good faith required that an organization observe its rules with respect to performance appraisal if it wished to rely on unsatisfactory performance for any decision that was adverse to a staff member.[63]

Although the decision not to extend the Complainant's appointment involved procedural and other errors, the Tribunal considered that it did not follow that her fixed-term contract would have been renewed if those errors had not occurred. Accordingly, it ruled that reinstatement was not an appropriate remedy. On the other hand, the Tribunal consid-

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[58] Ms. Mary G. Gaudron, President, Mr. Seydou Ba, Vice-President, and Mr. Claude Rouiller, Judge.

[59] See *F.S.W.* v. *International Criminal Court*, Judgment No. 2573 (7 February 2007), paragraph 10 of the considerations; In re *Amira*, Judgment No.1317 (31 January 1994), paragraph 23 of the considerations.

[60] See In re *Scherer Saavedra*, Judgment No. 1262 (14 July 1993), paragraph 4 of the considerations.

[61] *Ibid*.

[62] See In re *Ricart Nouel*, Judgment No. 1583 (30 January 1997), paragraph 6 of the considerations.

[63] See *A.E.L.* v. *International Telecommunication Union (ITU)*, Judgment No. 2414 (2 February 2005), paragraphs 23 and 24 of the considerations.

ered that the Complainant was entitled to compensation in respect of material and moral damages, on the basis that she had lost a valuable chance of having her contract renewed had proper procedures been observed.

7. Judgment No. 2919 (8 July 2010): E.C.D., E.H. and H.S. v. *European Patent Organisation (EPO)*[64]

Standing of Staff Committee members to challenge general decisions and decisions relating to external contractors—Consultation of the General Advisory Committee (GAC) of the European Patent Organisation—Prevalent practice of hiring external contractors constitutes an informal policy that requires consultation of the GAC

Three members of the Staff Committee of the European Patent Organisation (EPO) filed a complaint concerning the practice of the Principal Directorate IT Infrastructure and Services to assign duties to external contractors, outside the employment relationships specified in the Service Regulations, which were the same as or similar to those performed by permanent employees. They argued that by employing external contractors under "inferior working conditions", the Organisation was violating the right to equal treatment of these external contractors. Furthermore, the Complainants held that the recruitment procedure for external contractors excluded the staff representation from the selection process, thereby violating the rights of staff representatives. The Complainants requested the Tribunal to quash the President's decision to rely on temporary employment contracts without consulting the General Advisory Committee (GAC).

In reviewing its jurisprudence, the Tribunal observed that members of the Staff Committee could challenge a general decision that was not implemented at the individual level and that affected all staff.[65] It reiterated that it was often more efficient to have the members of the Staff Committee bring those types of matters forward.[66] The Complainants argued that case law recognized the standing of Staff Committee members to represent external contractors before the Tribunal.[67] However, the Tribunal observed that the Complainants had taken the relevant statement out of context. It held that, absent a connection flowing from a contract or deriving from employment status, the Tribunal would not be competent to entertain the complaint.

With regard to the GAC consultation, the Tribunal acknowledged that an internal regulation required the GAC to be consulted on any proposals that concerned the whole or part of the staff. The Tribunal, recalling its jurisprudence,[68] noted that in the present case no formal policy was in place. However, it inferred the existence of an informal policy

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[64] Ms. Mary G. Gaudron, President, Mr. Giuseppe Barbagallo and Ms. Dolores M. Hansen, Judges.

[65] See In re *Baillet (No. 2), Boeker, Bousquet, Cervantes (No. 2), Criqui, Kagermeier (No. 3) and Raths (No. 3)*, Judgment No. 1618 (30 January 1997), paragraphs 4, 5 and 6 of the considerations.

[66] See In re *Hamouda, Kigaraba (No. 5), Mjidou, Ranaivoson (No. 2), Sebakunzi, Suprapto (No. 2) and Tallon (No. 2)*, Judgment 1451 (6 July 1995), paragraph 18 of the considerations.

[67] See *F.B.P.M.B.* v. *European Patent Organisation*, Judgment No. 2649 (11 July 2007), paragraph 7 of the considerations.

[68] See In re *Baillet (No. 2), Boeker, Bousquet, Cervantes (No. 2), Criqui, Kagermeier (No. 3) and Raths (No. 3)*, Judgment No. 1618 (30 January 1997); and *J.A.S.* v. *European Patent Organisation (EPO)*, Judgment 2562 (12 July 2006).

from the prevalent practice of hiring external contractors. For this reason, the Tribunal concluded that the EPO must consult the GAC on the issue of outsourcing.

8. *Judgment No. 2920 (8 July 2010): H.S. and E.H.* v. *European Patent Organisation*[69]

Transfer of Appointments—Participation of Staff Committee in the staff selection process—Service Regulations do not apply to the transfer process—Vacancy announcements must be sufficiently detailed

The Complainants, acting in their capacities as Chairperson and Vice-Chairperson of the Staff Committee of the European Patent Organisation, disputed two transfer appointments (without competition) to two posts for which vacancy notices had been published. The Complainants claimed that this decision violated the right of the Staff Committee to participate in the selection process.

The Tribunal relied on its prior jurisprudence in finding that, as the Service Regulations did not explicitly deal with staff representation in the transfer process, the purposive interpretation of the Service Regulations taken by the Complainants was not valid.[70] The Tribunal thus rejected the claim on that point.

On the other hand, the Tribunal revoked one of the two appointments because of irregularities in the relevant vacancy announcement, finding that it had not been sufficiently detailed.

9. *Judgment No. 2926 (8 July 2010): N.L.* v. *International Labour Organization (ILO)*[71]

Status of an official of the Organization—Jurisdiction of the Tribunal—Status as an "official" can only be granted by a formal administrative document—The Tribunal only has jurisdiction over cases filed by officials of an organization

The complaint concerned the determination by the Tribunal whether the Complainant, who had worked for the Staff Union of the International Labour Organization for several years under an external collaboration contract, short term contracts and even without a formal contract, had the status of an official of the Organization.

The Tribunal found that the Complainant had not been granted the status of official by any formal administrative document. Accordingly, when he filed the complaint with the Tribunal, the Complainant was not in a position to invoke the status of an official bound to the Organization. It followed that the Complainant had no access to the Tribunal. The Tribunal declined jurisdiction and dismissed the complaint.

With regard to the argument that the Organization was legally responsible for the actions of the Chairperson of the Staff Union Committee, who maintained the Complainant's employment relationship without concluding any kind of contract with him, the Tribunal considered that those actions were grossly unlawful and therefore could not bind the Organization.

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[69] Ms. Mary G. Gaudron, President, Mr. Giuseppe Barbagallo and Ms. Dolores M. Hansen, Judges.

[70] *H.S.* v. *European Patent Organisation (EPO)*, Judgment No. 2792 (4 February 2009), paragraphs 8, 9 and 10 of the considerations.

[71] Mr. Seydou Ba, Vice-President, Mr. Claude Rouiller and Mr. Patrick Frydman, Judges.

10. Judgment No. 2933 (8 July 2010): B.D. v. World Health Organization (WHO)[72]

Restructuring of an international organization's services—Acquired rights—Reassignment procedure—Discretion of the executive head in the restructuring of an international organization's services—The amendment of a staff rule or regulation to an official's detriment amounts to a breach of an acquired right only when the structure of the contract of appointment is disturbed or if there is impairment of any fundamental term of employment in consideration of which the official accepted appointment—Appointment of reassignment committee members by the Director-General does not undermine the independence and impartiality required of the persons concerned

In the context of a dispute concerning the non-renewal of a contract subsequent to the abolition of a post, the Tribunal recalled its jurisprudence on the subjects of restructuring and acquired rights. It rejected the argument that the reassignment process, coordinated by a committee established by the Director-General of the World Health Organization, was incompatible with the transparent operation of the reassignment process.

The Tribunal reiterated that decisions concerning the restructuring of an international organization's services, such as a decision to abolish a post, may be taken at the discretion of its executive head and are consequently subject only to limited review.[73] The Tribunal also drew attention to the principle, set forth in case law,[74] that the amendment of a staff rule or regulation to an official's detriment amounts to a breach of an acquired right only when the structure of the contract of appointment is disturbed or if there is impairment of any fundamental term of employment in consideration of which the official accepted appointment.

Concerning the complaint that the reassignment process was flawed in that the Chair and certain members of reassignment committees are appointed by the Director-General, the Tribunal considered that this fact in no way undermined the independence and impartiality required of the persons concerned. Furthermore, the fact that the Staff Association provisionally withdrew from those committees did not in itself prove that the reassignment process was flawed.

11. Judgment No. 2944 (8 July 2010): C.C. v. United Nations Educational, Scientific and Cultural Organization (UNESCO)[75]

Termination without notice—Failure to abide by local laws and the public policy of the host State—Standards of Conduct for the International Civil Service constitute a general reference to all the professional and ethical

[72] Ms. Mary G. Gaudron, President, Mr. Seydou Ba, Vice-President and Mr. Patrick Frydman, Judge.

[73] See, for example, *F.M.L. v. United Nations Educational, Scientific and Cultural Organization (UNESCO)*, Judgment No. 1131 (3 July 1991), paragraph 5 of the considerations; and *W.G. v. International Telecommunication Union (ITU)*, Judgment No. 2510 (1 February 2006), paragraph 10 of the considerations.

[74] See *Robert V. Lindsey v. International Telecommunication Union (ITU)*, Judgment No. 61 (4 September 1962), In re *Ayoub, Lucal, Monat, Perret-Nguyen and Samson*, Judgment No. 832 (5 June 1987) and In re *Bangasser, Dunand, Marguet-Cusack and Sherran (No. 2)*, Judgment No. 1330 (31 January 1994).

[75] Mr. Seydou Ba, Vice-President, Mr. Claude Rouiller and Mr. Patrick Frydman, Judges.

OBLIGATIONS APPLICABLE TO CIVIL SERVANTS OWING TO THE REQUIREMENTS OF THEIR STATUS—PROPORTIONALITY

The Complainant, who had been with the Organization for almost 30 years, contested a disciplinary measure of termination without notice for reasons of unsatisfactory conduct. The measure had been imposed on her for failure to abide by local law and to respect the public policy of the host State; for compromising the reputation and image of the Organization; and for breaches of the Standards of Conduct for the International Civil Service. The Complainant had left arrears in her rent unpaid despite several orders from a domestic court requiring her to meet her obligations and despite numerous notices and reminders from the Organization, which had been contacted by the Ministry of Foreign Affairs of the host State about the matter.

The Tribunal found that the Complainant had indeed failed to respect local laws and institutions as well as public policy of the host State, and that the disciplinary measure of termination without notice was justified.

With regard to the Complainant's contention that the Standards of Conduct for the International Civil Service did not apply to her because they were issued after the acts with which she was charged, the Tribunal considered that the Standards should be construed as a general reference to all the professional and ethical obligations applicable to civil servants owing to the requirements of their status, and not as a specific reference to a given text codifying these obligations. Furthermore, in similar cases the Tribunal had observed that breaches of private financial obligations on the part of international civil servants were incompatible with the rules of conduct by which they must abide.[76]

As to the Complainant's contention that the disciplinary measure was disproportionate, the Tribunal pointed out that, according to firm precedent[77] and given the seriousness of the acts in question, notwithstanding the Complainant's length of service with UNESCO, the choice of the measure of termination was not manifestly out of proportion.

[76] See In re *Wakley*, Judgment No. 53 (6 October 1961), paragraph 7 of the considerations; In re *Gill*, Judgment No. 1480 (1 February 1996), paragraph 3 of the considerations; and In re *Souilah,* Judgment No. 1584 (30 January 1997), paragraph 9 of the considerations.

[77] In re *Khelifati*, Judgment No. 207 (14 May 1973); In re *van Walstijn*, Judgment No. 1984 (12 July 2000); and *S.N-S.* v. *Food and Agriculture Organization of the United Nations (FAO)*, Judgment No. 2773 (4 February 2009).

D. Decisions of the World Bank Administrative Tribunal[78]

1. *Decision Nos. 430 and 431 (23 March 2010): BF* v. *International Bank for Reconstruction and Development; and AY* v. *International Bank for Reconstruction and Development*[79]

Managerial Discretion—Due process requirements—"Accountability Review"—Reassignment—Supplemental Performance Evaluations

The Tribunal considered two applications brought by Bank staff members who had been reassigned following their involvement in a Bank project in Albania, which was perceived as being linked to Government demolitions of dwellings in the project area and its surroundings. Applicant A was Country Director for Central/South Europe and the Baltic Countries. Applicant B was the Task Team Leader for the project, with direct responsibility for the submission of the project documents to the Bank's Board.

Following the demolitions, the Bank's Inspection Panel undertook an investigation into the allegations that they had occurred as a result of the project and concluded that a series of serious errors had been committed during the project preparation, the Board presentation and the project implementation. The Inspection Panel's report was accompanied by a memorandum from the Panel's Chairperson which criticized the difficult investigation process and deliberate misinformation, including misrepresentation of facts by staff, reluctance to provide information and lack of transparency on project-related information.

The Bank's management then prepared a Management Report and Recommendation in Response to the Inspection Panel Report, the purpose of which was to identify mistakes made so as to draw the appropriate lessons, and not to ascertain individual accountability. Some of the staff members involved with the project, including Applicant B, were asked to assist in providing information for the purposes of this report. The Management Report and Recommendation detailed a series of errors committed during the project design, presentation to the Board and project supervision, as well as during the Inspection Panel proceedings. The report also identified failures by the project team.

The President of the Bank also tasked the Department of Institutional Integrity (INT) with leading an "Accountability Review" into the alleged misrepresentation by Bank staff to the Inspection Panel and internal events surrounding the project preparation, Board presentation and project supervision, to enable him to take corrective action. The Appli-

[78] 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.

[79] Jan Paulsson, President, and Judges Florentino P. Feliciano, Zia Mody, Stephen M. Schwebel, Francis M. Ssekandi and Mónica Pinto.

cants were interviewed by INT as persons "who may be able to assist it in determining some of the facts and circumstances", and were not notified of any specific charges against them. INT presented a draft report of its Accountability Review and preliminary inquiry to the Managing Director. In this draft, INT stated that it had found evidence to indicate that at least eight staff members and managers, including the Applicants, had engaged in actions or inactions which were indicative of varying degrees of poor performance. INT suggested a range of remedial actions that it considered to be proportionate to the degree of poor performance. However, INT stated that it had not at that stage found any evidence of ill-motive, or a wilful or conscious intent to mislead, on the part of staff, but identified some performance concerns that might be sufficiently egregious to constitute possible misconduct, and expressed its intent to look further into these matters.

In light of the preliminary findings of INT's Accountability Review and preliminary inquiry, as well as the shortcomings identified in the Management Report, the Bank's senior management decided to take measures. As a result, six individuals, including the Applicants, were reassigned to technical or non-managerial positions. In addition to the reassignment, Supplementary Performance Evaluations were undertaken for eight individuals, including the Applicants, "to amend their performance records for the period concerned regarding their performance on the Project".

The Applicants challenged the Bank's decision to reassign them to different positions and to undertake the Supplementary Performance Evaluations. In particular, the Applicants argued that their reassignments amounted to a *de facto* disciplinary action; that they were denied due process; and that the Bank's decisions were unfair and arbitrary. In response, the Bank argued that the decision to reassign them was not equivalent to a disciplinary sanction, but that it constituted a legitimate exercise of managerial discretion; that the Applicants were afforded due process; and that the Supplementary Performance Evaluations reflected a fair appraisal of their performance.

In considering the merits, the Tribunal recognized that the demolition carried out, and the perception of its link to the project, were serious matters with the evident potential of harming the Bank's reputation. Nevertheless, the Tribunal stressed that the attribution of individual responsibility must be carried out with respect for the principles of due process, transparency and fairness, to guarantee that any effects on individuals were justified by facts as assessed by legitimate standards. In addressing the claim that the reassignment decisions amounted to *de facto* disciplinary sanctions, the Tribunal held that by mandating INT to undertake an "accountability review", it was not clear whether the steps taken by the Bank had been administrative or disciplinary in nature. The Tribunal found that there was a basis for inferring that the decisions had been disciplinary in nature and that there had been several significant deficiencies in the steps taken by the Bank. The impugned decisions, which apparently related to performance issues, had been taken on the basis of preliminary findings in a draft report, before INT had concluded its investigation and before it had determined that there was insufficient basis for a misconduct investigation. The Bank had also failed to take account of all relevant factors by giving considerable weight to the alleged failures in the project and very little weight to the prior and subsequent positive evaluations of the Applicants' performance. The Tribunal expressed its discomfort with the ambiguities of the Bank's posture vis-à-vis the Applicants, which, it stated, bespoke haste and a lack of confident understanding of the Staff Rules. The Tribunal also reviewed whether the Bank had respected the requirements of due process in these

cases. The Tribunal concluded that the Applicants had not been given adequate notice of the performance concerns and a meaningful opportunity to defend themselves in respect of the Inspection Panel investigation and report, the investigation by INT and the preparation of its draft report, and in the context of the Supplemental Evaluation process.

The Tribunal noted that the consequences of the failure to secure an explicit agreement from the Government to respect a moratorium on demolitions had not been shown to be directly attributable to Applicant A. It stated that, as a consequence of the diffuseness of responsibility that seemed to have characterized the Bank's performance, individual accountability had been diluted, in some instances to the vanishing point. According to the Tribunal, this was a recurrent issue of organization for which the Bank's central management bore responsibility. Nevertheless, the Tribunal considered that Applicant A, as an officer of the Bank operating on the basis of confidence in her ability to oversee significant operations as Director for a number of countries in the region, should face the reality of being to some extent held accountable for the setbacks in her domain, irrespective of the lack of conclusive proof of fault and causation. Accordingly, the Tribunal decided not to order rescission of the decision to reassign her. The Tribunal did, however, order rescission of the Supplementary Performance Evaluation, and awarded Applicant A USD120,000, net of taxes, for the flaws in the process by which her performance was found deficient. The Tribunal considered that this amount reflected the fact that she had neither been dismissed, demoted nor had suffered direct financial prejudice.

With respect to Applicant B, the Tribunal stated that it could not overlook certain circumstances that were established by the Applicant's own statements. In particular, the Tribunal noted that, by her own admission, the Applicant gave a presentation to the Board which included a statement she knew to be inaccurate. Furthermore, Applicant B continued to refer to an agreement to a moratorium which she knew did not exist and allowed reports to be issued that repeated this inaccuracy. The Tribunal held, however, that the Applicant was entitled to a fair and serious assessment that complied with the Staff Rules and provided her the full opportunity to disprove the Bank's adverse conclusions regarding her performance and to explain the account of relevant events contained in her own statements. The Tribunal thus rescinded the Supplementary Performance Evaluation. The Tribunal allowed the reassignment decision to stand, but stated that it should be overturned or confirmed by the Bank according to the outcome of a new assessment of her performance.

Furthermore, as both Applicants had succeeded in demonstrating that the Bank committed a series of errors, and thereby violated their rights in virtually every step it took to assess and evaluate their performance, they were awarded costs.

2. *Decision No. 444 (29 December 2010): BK* v. *International Bank for Reconstruction and Development*[80]

Short-listing process—Failure to comply with guidelines—Career mismanagement

The Applicant joined the Bank in 1986 and received a number of promotions, reaching the GG level in 1996. The Applicant was nominated for promotion to the next level,

[80] Stephen M. Schwebel, President, and Judges Francis M. Ssekandi and Monica Pinto.

but his promotion was not approved "given his lack of multi-regional experience". In 2008, the Applicant applied for several GH level positions, including three positions which were the subject-matter of his application before the Tribunal. The shortlisting committees convened for each of the positions decided not to include the Applicant on the shortlists.

The Applicant contended that the Bank's decisions not to include him on the shortlists for the three positions had been unfair, made in violation of the Bank's Principles of Staff Employment, and were borne out of an improper procedure. He contended that, first, there was no observable and reasonable basis for the Bank's decisions not to include him on the short-lists; second, the decisions were unfair and discriminatory; and third, the Bank did not follow its "Shortlisting Guidelines". He also claimed that he should be compensated for the mismanagement of his career by the Bank. In response, the Bank argued that the selection of a staff member for a particular position involves the exercise of managerial discretion, which was properly exercised in respect of the three positions in question.

Recalling its precedents with regard to the exercise of managerial discretion in selecting staff members for positions, the Tribunal reviewed the contested decisions so as to consider whether the Bank had a reasonable basis for its decisions and whether the procedure in making these decisions was properly followed.

The evidence before the Tribunal included the testimony provided by members of the shortlisting committees convened for each position and the hiring managers. The Tribunal concluded that the evidence showed a reasonable basis for the decisions of each of the shortlisting committees, and that the shortlisting committees assessed each candidate's suitability against the selection criteria listed in the vacancy announcement. The Tribunal also recalled its decision in *Garcia-Mujica*, Decision No. 192 [1998] in which it stated "[t]he identification and definition of specializations is a matter that comes within the managerial discretion of the Bank as does the evaluation of the corresponding skills to perform these tasks". The Tribunal was not persuaded that the Bank's decisions in this regard were unfair or discriminatory.

In reviewing the process followed by the Bank in arriving at the shortlist, the Tribunal recalled, *inter alia*, the Bank's Shortlisting Guidelines which stated that the shortlisting process should be guided by principles including "objectivity", "transparency", "rigor" and "diversity". The Shortlisting Guidelines also stated that the objective is to "create a shortlist of candidates considered to be the best qualified to put forward for interviews. . . . A Hiring Manager will typically convene a shortlisting committee of up to 4 people, with at least one from outside the hiring unit. Shortlisting results must be documented". The Tribunal found that the procedure was appropriately followed in respect of the third position, but found procedural deficiencies in respect of the first and second positions.

Regarding the first position, the Tribunal noted that the shortlisting committee was composed of the Hiring Manager, a Senior Human Resources Officer, and one other staff member from within the same hiring unit. The Tribunal concluded that the participation of the Hiring Manager in the shortlisting process was not contrary to the Shortlisting Guidelines. The Tribunal found nothing unusual about the practice, employed in some units of the Bank, whereby hiring managers would participate in the shortlisting stage as part of the shortlisting committee. The Tribunal held, however, that the Human Resources Officer cannot be considered as "staff from a different unit", as she testified that she participated in the shortlisting process "as an external witness . . . for the process to be followed

. . ".. Accordingly, the Tribunal noted that, contrary to the Guidelines, there were in reality only two persons, both of whom were from within the hiring unit, on the shortlisting committee.

With regard to the second position, the Tribunal noted that the shortlisting committee was composed of two individuals only, a manager from the hiring unit and a Senior Human Resources Officer. The Tribunal found that this shortlisting committee fell short of the requirements in the Bank's Shortlisting Guidelines. The Tribunal was unpersuaded by the argument that the shortlisting was done in accordance with the prevailing practice in the department at the time. The Tribunal held that the fact that a hiring unit has pursued a deficient practice was no justification for the continued application of that practice. The unit's repetition of a deficient practice does not cure the deficiency, especially where the deficiency is contrary to the Bank's own guidelines.

The Tribunal observed that the Bank did not follow a consistent and uniform practice with respect to the shortlisting of candidates. It opined that uniformity and consistency in the shortlisting process, clear guidelines, and diversity in the composition of shortlisting committees would enable the Bank to achieve its own declared recruitment objectives. The Tribunal further observed that staff members' confidence in the shortlisting process would be enhanced by proper and contemporaneous documentation of the deliberations of shortlisting committees in as much detail as practicable.

The Tribunal concluded that the shortcomings in the process, while not amounting to mismanagement of the Applicant's career and not requiring rescission of the decisions, were sufficiently significant to warrant compensation for the Applicant. In determining the quantum of damages, the Tribunal was mindful that it was possible, but not certain, that the Applicant might not have brought the Application had the process not been deficient. The Tribunal similarly could not conclude that, but for these shortcomings in the process, there was a high likelihood that the Applicant would have been recruited for any of the positions in question. The Applicant was awarded compensation in the amount of nine months' salary, net of taxes, and costs.

3. *Decision No. 445 (29 October 2010): BI* v. *International Bank for Reconstruction and Development*[81]

Performance evaluations—Taking into account positive and negative factors—Failure to comply with the Tribunal's order

The Applicant challenged the ratings in her Overall Performance Evaluations, and the corresponding Salary Review Increases, for 2007 and 2008. During the 2007 evaluation period, the Applicant had worked in a department of the Human Resources Vice Presidency. The Applicant's supervisor in this department (Mr. A) was replaced, seven months into the review period, by a new manager (Mr. B). The Applicant and Mr. B appeared to have had a number of disagreements leading to a difficult working relationship. The Applicant met with Mr. B in order to review her performance for the 2007 evaluation period. Mr. B rated the Applicant as "Fully Satisfactory" in three areas of her Results Assessment, and "Partially Successful" for her Resource Management responsibilities. The Applicant was

[81] Jan Paulsson, acting Vice-President as President, and Judges Florentino P. Feliciano and Mónica Pinto.

also rated "Partially Successful" in three out of four areas in her Behavioral Assessment. These ratings were in contrast to her previous OPEs for 2004, 2005 and 2006 in which the Applicant primarily received "Superior" ratings, and never received a rating below "Fully Satisfactory". It also appears that the Applicant's initial supervisor, Mr. A, had provided Mr. B with written feedback on the Applicant's performance for the first seven months of the review period, in which her performance was described as "generally positive". The Applicant refused to sign this performance evaluation.

The Applicant was transferred to another department in Human Resources where she was managed by Mr. C. Mr. C gave evidence that he had attempted to intervene between the Applicant and Mr. B as an "informal mediator" so that her 2007 performance evaluation might be finalized. As a result of this process, Mr. B agreed to raise three ratings in the Applicant's Behavioral Assessment but refused to raised the Partially Successful rating in the Results Assessment section of her evaluation. The Applicant and Mr. C signed her 2007 performance evaluation thereafter. The Applicant and Mr. C later signed her 2008 performance evaluation, in which she was rated "Fully Successful" in all areas.

In considering the application, the Tribunal considered whether there was a reasonable and observable basis for the ratings assigned in the Applicant's performance evaluations for the two periods under review. In so doing, the Tribunal recalled its jurisprudence, particularly *Prudencio*, Decision No. 377 [2007], in which it made clear that it was not its role to undertake a microscopic review of the Applicant's performance and to substitute its own judgment about her performance for the Bank's. The Tribunal also recalled the difficulties it faced in reviewing positive evaluations, such as the "Fully Successful" ratings challenged by the Applicant. The Tribunal recalled its decision in *Yoon (No. 5)*, Decision No. 332 [2005] in which it noted "[o]f course, staff members who are convinced that their performance has been undilutedly superlative may be legitimately irritated if their evaluation contains inexplicable and unsubstantiated reservations, or even suggestions for improvement. Managers have a duty to carry out meaningful evaluations, and staff members have a corresponding entitlement. The problem is rather that with respect to *satisfactory* performance: (a) the prejudice arising from below-superlative assessment is incomparably less manifest than in cases of termination; and (b) the feedback underlying such assessments is likely to be more subjective than instances of objective non-fulfillment of precise tasks." The Tribunal thus considered it faced similar difficulties in the present case. It noted that, while the Applicant had received good performance evaluations in the past, the Tribunal was unable to conclude that the "Fully Successful" ratings in her 2007 and 2008 performance evaluations were unwarranted or too low.

The Tribunal thus turned to consider the basis upon which the Bank arrived at the "Partially Successful" rating in the Applicant's 2007 performance evaluation. The Tribunal ordered the Bank to provide "any documents that have a bearing on the 'Partially Successful' rating in respect of Resource Management in the Applicant's 2007 OPE," and "irrespective of the existence of such documents . . . called upon the Bank to provide such explanation for the 'Partially Successful' rating as it can." In response, the Bank presented feedback submitted at the time by the Chief Administrative Officer in the Applicant's department to Mr. B for the purposes of preparing the 2007 OPE. That feedback included specific comments in which limitations of the Applicant's performance on Resource Management matters were identified and some examples were provided. The Chief Administrative Officer's feedback was reflected, almost verbatim, in Mr. B's comments in the draft

OPE. The Bank was not able to present an explanation from Mr. B himself as to how he arrived at the adverse rating in view of both the negative feedback he received from the Chief Administrative Officer and the positive feedback from Mr. A. On this issue, the Tribunal stated that "[t]he Tribunal considers that sound management dictates that a supervisor should make him or herself reasonably available to explain the basis upon which he or she arrived at an evaluation of a staff member's performance, especially when called upon to do so by the Tribunal." It found that Mr. B's failure to provide an explanation, and the Bank's apparent inability to bring Mr. B. to comply with the Tribunal's order, amounted to a failure to respect the Tribunal's role or, at best, a lack of understanding of the function of this Tribunal. This generated considerable concern on the part of the Tribunal, as it indirectly affected the ability of all staff members to seek meaningful recourse before it and aggravated the perception of unfairness by a staff member who has taken the required steps to pursue his or her claim.

The Tribunal upheld the performance evaluations, but ordered that the Applicant be paid a sum of USD45,000, net of taxes, for the Bank's failure to provide an explanation as to how Mr. B arrived at the adverse performance rating.

E. Decisions of the Administrative Tribunal of the International Monetary Fund[82]

Judgment No. 2010–4 (3 December 2010): Ms. "EE" v. *International Monetary Fund (IMF)*[83]

Sexual harassment—Preliminary inquiry—Administrative leave with pay—Escort by security—Due process—Allegations of false accusation and bias—Authority of the human resources department director to place a staff member on administrative leave with pay—Inconsistency in governing rules—Written regulations should provide effective and accurate notice of the governing requirements—The principle of *audi alterem partem* constitutes a general principle of international administrative law—Escorts should be conducted in a manner least embarrassing to a staff member—No time limit on administrative leave with pay—Right to pursue a timely complaint of sexual harassment is not extinguished by the termination of employment of the alleged perpetrator—Tribunal's remedial authority to provide relief for procedural irregularity

The Applicant, a staff member of the International Monetary Fund (IMF or "the Fund"), had been engaged in a sexual relationship with her then manager, Mr. X, from December 2004 to May 2007. The relationship had ended in November 2007, when Mr. X

[82] The Administrative Tribunal of the International Monetary Fund became operational on 1 January 1994. The Tribunal is competent to pass judgment upon any application: a) by a member of the staff challenging the legality of an administrative act adversely affecting him; or b) by an enrollee in, or beneficiary under, any retirement or other benefit plan maintained by the Fund as employer challenging the legality of an administrative act concerning or arising under any such plan which adversely affects the applicant. For more information on the Administrative Tribunal of the International Monetary Fund and the full texts of its judgments, see http://www.imf.org/external/imfat/index.htm.

[83] Stephen M. Schwebel, President, Catherine M. O'Regan and Andrés Rigo Sureda, Judges.

had provided a non-favourable Annual Performance Review (APR) to the Applicant, which put her at risk of mandatory separation. Throughout the period of his intimate relationship with the Applicant, Mr. X had another extramarital relationship with another Fund staff member, Ms. Y. In April 2008, the Applicant's counsel notified the Human Resources Department (HRD) Director that the Applicant intended to bring a complaint against the Fund and specifically against her supervisor, Mr. X, on the ground of sexual harassment at the workplace. Since Mr. X was retiring from the Fund a few days later, the Ethics Office orally advised the Applicant to drop the matter and not to pursue her grievance. The Applicant subsequently initiated a grievance challenging her performance rating and alleging harassment by Mr. X, which the Grievance Committee dismissed as untimely.

Thereafter, the Applicant left an angry phone message on Mr. X's home voicemail, threatening to reveal their past affair to his wife and to Ms. Y. She then emailed several offensive messages to Ms. Y through personal and IMF email accounts and mailed erotic pictures of her and Mr. X to Ms. Y's home address. On 9 June 2008, Ms. Y contacted the Ethics Officer about the Applicant's harassment at work and expressed concern about her safety on the Fund premises. The Ethics Officer conducted a preliminary inquiry, during which the Officer conducted interviews with a Senior Administrative Assistant, the Department Director and Mr. X, and sought advice from an external risk assessment firm. The latter suggested putting the Applicant on administrative leave. The Ethics Officer recommended this course of action to the HRD Director, who decided, under the Terms of Reference for the Ethics Officer (General Administrative Order (GAO) No. 33) and the Procedural Guidelines for Conducting Inquiries Related to Allegations of Misconduct (the Procedural Guidelines), to place the Applicant on administrative leave with pay while the investigation of misconduct was on its way, pursuant to GAO No. 13, Section 9.01.

Immediately after her last meeting with the Ethics Officer, who provided her with two memoranda ("Notice of Investigation into Allegations of Inappropriate Conduct by a Fund Staff Member" and "Administrative Leave with Pay Pending Investigation of Misconduct"), the Applicant was escorted by the Fund security personnel to her office to collect personal belongings and to the nearest subway station. The procedure of escorting by the Fund security, while not reflected in any internal Fund rules, had been initiated by the Chief Security Officer's recommendation many years ago and had been implemented ever since.

During six months of administrative leave, the Fund denied the Applicant's request for a copy of the documents evidencing the Ethics Officer's recommendation and the HRD Director's decision. On December 15, 2008, one month following the submission of the Ethics Officer's Report of Investigation, the acting HRD Director issued a formal charge of misconduct against the Applicant. Following the Applicant's thorough response to the official charge, the Acting HRD Director imposed, on 10 February 2009, the following disciplinary sanctions on the Applicant: (1) a written reprimand, to remain in her confidential personnel record for three years; (2) ineligibility for a salary increase in 2009; and (3) "strict instructions not to contact Ms. Y". The decision further notified the Applicant that her disciplinary process had been concluded and that she was requested to return to active status.

On 25 November 2008, while the misconduct proceedings were still ongoing and before she had been charged with misconduct, the Applicant filed a grievance with the Fund's Grievance Committee challenging the administrative leave decision of 26 August

2008. On 2 September 2009, the Grievance Committee rejected her application and issued its Recommendation and Report, concluding that the decision challenged represented a legitimate exercise of discretionary authority. On 30 November 2009, the Applicant filed her application with the IMF Administrative Tribunal.

In her application, the Applicant contested the Fund's decision to place her on administrative leave. She asserted that the proceedings against her were based upon false accusations brought by another staff member; that the Ethics Officer had acted with bias in examining those accusations; and that the HRD Director had failed to exercise independent judgment in taking the contested decision to place her on administrative leave pending the outcome of the misconduct proceedings. The Applicant also contended that the Fund had violated due process and the Fund's own regulations, by placing her on administrative leave with pay without first seeking her account of the events at issue. Furthermore, the Applicant claimed that the investigation of misconduct had been substantially concluded before the administrative leave decision was taken; accordingly, she questioned the timing of that decision and the duration of the leave. The Applicant further complained about the embarrassment of being escorted off the Fund premises by security. The Applicant sought compensation in the amount of USD350,000 for six months of suffering on leave and for the humiliation of the escort.

The Fund maintained that the decision to place the Applicant on administrative leave with pay, pending the investigation of misconduct, represented a proper exercise of discretionary authority, which had been carried out in accordance with the applicable rules. The Fund also maintained its position that the contested decision had been taken free from any bias, animus or other improper motive, and that the leave had been necessary and not of excessive duration. The Applicant had been given the opportunity to respond to the allegations against her during the period of the administrative leave, and she had been escorted from the building in accordance with standard Fund procedures in such cases.

In examining the application, the Tribunal noted that the Applicant did not challenge the finding of misconduct or the disciplinary sanctions, but that her application was restricted to a claim of due process violations and a challenge to the evidentiary basis of the decision to put her on administrative leave. The Tribunal concluded that the Applicant's assertion that the administrative leave decision lacked an adequate evidentiary basis as being based upon "false accusations" was largely undermined by the fact that she had not brought a legal challenge to the ultimate finding of misconduct against her. The Tribunal also noted that the HRD Director had authority to place a staff member on administrative leave with pay "on the sole grounds that an inquiry into alleged misconduct by that staff member is ongoing." Additionally, the Tribunal concluded that, at the time of the decision, there was *prima facie* evidence warranting an ongoing investigation into alleged misconduct by the Applicant and that there had been a tenable basis to decide that the Applicant's continued presence in the workplace during the misconduct proceedings posed a risk of future harm. However, the Tribunal concluded that the Ethics Officer, in failing to interview the Applicant prior to completing the preliminary inquiry, had not complied with the terms of the Procedural Guidelines.

The Tribunal observed inconsistencies among the governing rules, in particular among the Procedural Guidelines, on the one hand, and GAO No. 13, section 9.01 and GAO No. 33, section 10, which predated the Guidelines, on the other. The Procedural

Guidelines referred neither to "interim measures" nor to "administrative leave", while GAO No. 13 and 33 did not refer to the stages of the Ethics Officer's "preliminary inquiry" and "formal investigation", as set out in the Procedural Guidelines. The Tribunal determined that section 10 of GAO No. 33 continued to govern the timing of an administrative leave decision, and noted the importance of the Fund's written regulations in providing effective and accurate notice of the governing requirements. It found that a staff member should be provided with the texts of the relevant staff rules when he or she is notified that he or she is under investigation and when he or she is charged with having violated a particular substantive standard. The Tribunal found no indication that the Applicant had been provided with the relevant Procedural Guidelines and GAOs at the time that she was informed of the initiation of the misconduct proceedings against her and when she was placed on administrative leave.

The Tribunal found no clear answer in the Fund's written law to the question whether the HRD Director would have been required, prior to deciding to place the Applicant on paid administrative leave, to afford the Applicant the opportunity to present her own version of the events at issue. However, the Tribunal considered that the principle of *audi alterem partem* constituted a general principle of international administrative law. Accordingly, the Director should have provided the Applicant with the opportunity to present her account of the events at issue before taking the decision to put her on administrative leave with pay. With regard to alleged bias of the Ethics Officer and other staff members, the Tribunal found no evidence for the alleged conspiracy by Mr. X, Ms. Y, the Senior Administrative Assistant and the Ethics Officer.

In response to the manner of removing the Applicant from the Fund's premises, the Tribunal considered that, although the record indicated no abusive act during the escort, the Fund should seek ways to minimize the public embarrassment to a staff member. Suggestions by the Tribunal included escorting a staff member at the end of the workday, or disabling a staff member's security pass and instructing him or her not to report the next day.

With regard to the length of the administrative leave, the Tribunal found that the Fund's rules did not impose a time limit on the disciplinary process.

Furthermore, the Tribunal questioned the Fund's inactivity to launch a formal investigation into Mr. X's misconduct, allegedly due to fact that, when his conduct came to light, he had already retired. The Tribunal reaffirmed that the disciplinary process is not the only avenue of recourse when a staff member believes that he or she has been the object of impermissible workplace harassment. Regardless of whether Mr. X remained subject to the Fund's misconduct procedures following his retirement, the Applicant's right to pursue a timely complaint of sexual harassment was not extinguished by the termination of Mr. X's employment as a staff member of the Fund.

Finally, while sustaining the Fund's decision to place the Applicant on paid administrative leave pending the investigation of misconduct, the Tribunal held that it had remedial authority to provide relief for procedural irregularity. It found the Fund liable for procedural irregularities. The Fund's failure to seek from the Applicant an account of her version of the facts before taking the administrative decision violated the Fund's written internal law and fair procedure. For that breach of due process, the Tribunal granted the Applicant compensation in the amount of USD45,000.

Chapter VI

SELECTED LEGAL OPINIONS OF THE SECRETARIATS OF THE UNITED NATIONS AND RELATED INTERGOVERNMENTAL ORGANIZATIONS*

A. Legal opinions of the Secretariat of the United Nations

(Issued or prepared by the Office of Legal Affairs)

1. Privileges and immunities

(*a*) Note Verbale to the Permanent Representative of [State] concerning the privileges and immunities of [a United Nations entity]

Abuse of privileges and immunities—Distinction between a United Nations entity and individual staff members—Concept of *persona non grata* only applies to accredited officials—Obligation of the United Nations to cooperate with local authorities—Official capacity—Secretary-General has sole authority to establish whether privileges and immunities apply—Prior to bringing charges against United Nations staff members, States must inform the United Nations so that it can determine whether immunity applies—Measures that increase the financial or other burdens of the Organization are inconsistent with Article 105 of the Charter of the United Nations

The Legal Counsel of the United Nations presents her compliments to the Permanent Representative of [State] to the United Nations and has the honour to refer to the Permanent Mission's Note Verbale addressed to the Office of Legal Affairs dated [date] [reference number] alleging abuse by the [United Nations entity] Country Office in [State] of its privileges and immunities in relation to the importation and use of telecommunication facilities.

The Legal Counsel wishes to inform the Permanent Representative that the United Nations takes seriously the allegations that are contained in the Permanent Mission's Note Verbale. In this regard, further to the Legal Counsel's Note Verbale [date], the Legal Counsel wishes to inform the Permanent Representative that the United Nations Office of Internal Oversight Services (OIOS) has been seized of the matter and is conducting an investigation. However, the Legal Counsel wishes to reiterate once again that the allegations lodged against [the United Nations entity] and those lodged against individual [United Nations entity] staff members must be dealt with separately.

* This chapter contains legal opinions and other similar legal memoranda and documents.

In this connection, the Legal Counsel notes that the Government requests "[Name 1] to leave the country within 24 hours as of the receipt of this Note Verbale by the United Nations". The Legal Counsel wishes to recall that the concept of *persona non grata*, which is implied in the Permanent Mission's Note Verbale, cannot be applied in the case of United Nations officials who are not accredited to the [Government]. Article 100, paragraph 2, of the Charter of the United Nations states that "[e]ach Member of the United Nations undertakes to respect the exclusively international character of the responsibilities of the Secretary-General and the staff and not to seek to influence them in the discharge of their responsibilities". Furthermore, article XVI, paragraph 1 (b) of the [Cooperation Agreement] provides that "[United Nations entity] officials [. . .] shall be entitled [. . .] to unimpeded access to or from the country".

The Legal Counsel also wishes to recall that under article V, section 21, of the Convention on the Privileges and Immunities of the United Nations* adopted by the General Assembly on 13 February 1946 (hereinafter the "General Convention"), to which [State] is a party without any reservation since [date], the United Nations has an obligation to cooperate at all times with the appropriate authorities of Member States to facilitate the proper administration of justice. The Legal Counsel wishes to reiterate that the United Nations is willing to cooperate with the Government in resolving the matter in a manner consistent with the Charter of the United Nations, the General Convention and the [Cooperation Agreement]. In this regard, the Legal Counsel wishes to invite the Permanent Representative to a meeting to discuss the matter further.

The Legal Counsel understands that [the United Nations entity] has decided to reassign [Name 2] to a different duty station. Without prejudice to the provisions referred to above and the outcome of the investigation by the United Nations into the matter, [Name 1] is scheduled to leave [State] today.

Furthermore, the Legal Counsel is informed that the competent [State] authorities are considering bringing charges against [Name 2] and [Name 3], both locally-recruited [United Nations entity] staff members who had earlier been detained. The Legal Counsel wishes to reiterate that pursuant to article V, section 18 (a) of the General Convention and article XIII, paragraph 1 (a) of the [Cooperation Agreement], both [Name 2] and [Name 3] are "immune from legal process in respect of words spoken or written and all acts performed by them in their official capacity". If the Government wishes to bring any charges against them, the United Nations needs to be informed of the specific charges, including facts supporting the charges, so that it can make a determination on whether immunity applies and take the necessary action. This includes notifying the Government of the decision of the Secretary-General as to whether to assert immunity from legal process for the officials concerned.

The Legal Counsel wishes to reiterate that pursuant to article V, section 20 of the General Convention, it is the Secretary-General who has the *sole authority* and duty to establish whether privileges and immunities apply in a particular case. This has been recognized by the International Court of Justice (ICJ) in its advisory opinion on the Difference Relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human

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

Rights of 29 April 1999 (the so-called "Cumaraswamy case").* The ICJ's opinion provides that "the Secretary-General, as the chief administrative officer of the Organization, has the primary responsibility to safeguard the interests of the Organization; to that end, *it is up to him to assess whether its agents acted within the scope of their functions* and, where he so concludes, to protect these agents, including experts on mission, by asserting their immunity. This means that the Secretary-General has the authority and responsibility to inform the Government of a Member State of his finding and, where appropriate, to request it to act accordingly" (emphasis added).

Under section 34 of the General Convention, [State] has an obligation to be "in a position under its own law to give effect to the terms of this Convention". Moreover, as to the provisions of the General Convention, any interpretation thereof must be carried out within the spirit of the underlying principles of the Charter of the United Nations, and, in particular, Article 105. Measures which might increase the financial or other burdens of the Organization are to be viewed as being inconsistent with this provision.

[. . .]

29 January 2010

(*b*) Interoffice memorandum to the Chief, Special Procedures Branch, Office of the High Commissioner for Human Rights (OHCHR), concerning the request for information on extending immunity from legal process to studies and/or reports prepared for a Special Rapporteur by a group of researchers

Special Rapporteurs of the Human Rights Council enjoy privileges and immunities accorded to experts on mission—Privileges and immunities of experts on mission are granted in the interest of the Organization and not for personal benefit—Special Rapporteur cannot extend privileges and immunities to researchers not appointed by the United Nations—Privileges and immunities of publications by the Special Rapporteur or the United Nations do not extend to external authors—Copyright and intellectual property

1. This is with reference to your memorandum of [date] requesting our advice on the questions put forth by [Name], the [Special Rapporteur of the Human Rights Council]. In particular, he has inquired whether the immunities he benefits from as a United Nations expert could be extended to a group of researchers at [University] from whom he commissioned a set of case studies. He has also inquired whether the immunity he enjoys extends to the studies so commissioned. Our comments are as follows.

2. Special Rapporteurs of the Human Rights Council enjoy the privileges and immunities accorded to experts on mission pursuant to article VI of the Convention on the Privileges and Immunities of the United Nations** (hereinafter, the "Convention"). In accordance with article VI, section 22 of the Convention, "experts performing missions for the United Nations shall be accorded such privileges and immunities as are necessary for the independent exercise of their functions during the period of their missions". In par-

* *Difference Relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights, Advisory Opinion, I.C.J. Reports 1999*, p. 62.

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

ticular, section 22(b) provides that experts on mission enjoy immunity from legal process of every kind in respect of words spoken or written and acts done by them in the course of the performance of their mission. Section 22(c) further provides that experts on mission shall also be accorded inviolability for all papers and documents. Finally, in accordance with section 23, "privileges and immunities are granted to experts in the interests of the United Nations *and not for the personal benefit of the individuals themselves*. The Secretary-General shall have the right and the duty to waive the immunity of any expert in any case where, in his opinion, the immunity would impede the course of justice and it can be waived without prejudice to the interests of the United Nations". (emphasis added)

3. Based on the foregoing, the researchers in question would have had to have been engaged or appointed by the United Nations, including OHCHR, or by the Human Rights Council, to be accorded the status of experts performing missions for the United Nations within the meaning of article VI of the Convention. It appears from the information provided, however, that the [University] researchers were engaged by [Name] himself. He is not in a position to pass on to them the status or the privileges and immunities he is accorded under the Convention.

4. As for the case studies [Name] has commissioned, they can only be covered by immunity if they are (i) used or published by [Name], in his capacity as a Special Rapporteur of the Human Rights Council or (ii) by the United Nations, including its principal and subsidiary organs and its officials. In the former case, and subject to the rights and duties of the Secretary-General under section 23, the studies could be protected both as words spoken or written by him in the course of the performance of his mission under section 22(b) and/or as his inviolable papers and documents under section 22(c). In the latter case, they could also be deemed to be documents of the United Nations within the meaning of article II, section 4 of the Convention pursuant to which "the archives of the United Nations and in general all documents belonging to it or held by it shall be inviolable wherever located". In either case, any immunity or inviolability conferred upon the case studies would not extend to the [University] researchers who authored them. Moreover, the studies would not enjoy any immunity in connection with their use or publication by the [University] researchers themselves.

5. Finally, and albeit beyond the scope of his inquiry, we would advise [Name], if he has not already done so, to obtain from the [University] researchers any and all copyrights and/or intellectual property rights to the case studies he has commissioned from them.

24 June 2010

(*c*) Note to the President of the International Criminal Tribunal for Rwanda concerning the immunity of defence counsel

Immunity from legal process for words spoken or written by defence counsel in official capacity—Obligation of all States to accord defence counsel such treatment as is necessary for the proper functioning of the Tribunal—Immunity of defence counsel does not extend to the Tribunal's disciplinary rules—Defence counsel enjoy privileges and immunities accorded to experts on mission—Immunity from legal process includes immunity from legal proceedings to determine the applicability of that immunity—Exclusive authority of the Secretary-General

TO DETERMINE EXTENT OF IMMUNITY OF EXPERTS ON MISSION—PRIOR TO BRINGING CHARGES AGAINST DEFENCE COUNSEL, STATES MUST INFORM THE UNITED NATIONS SO THAT IT CAN DETERMINE WHETHER IMMUNITY APPLIES—PRIVILEGES AND IMMUNITIES ARE GRANTED TO DEFENCE COUNSEL IN THEIR OFFICIAL CAPACITY, IN THE INTEREST OF THE TRIBUNAL AND NOT FOR THEIR PERSONAL BENEFIT—DEFENCE COUNSEL MUST ENSURE THAT THEIR PERSONAL VIEWS AND CONVICTIONS DO NOT ADVERSELY AFFECT THEIR OFFICIAL DUTIES OR THE INTERESTS OF THE TRIBUNAL

INTRODUCTION

1. This note seeks to clarify the immunity accorded to defence counsel at the International Criminal Tribunal for Rwanda (ICTR). There are three relevant legal instruments in this regard, namely: the Statute of the International Criminal Tribunal for Rwanda* (the Statute); the Agreement between the United Nations and the United Republic of Tanzania concerning the Headquarters of the International Tribunal for Rwanda** (the Headquarters Agreement); and the Memorandum of Understanding between the United Nations and the Republic of Rwanda to regulate matters of mutual concern relating to the Office in Rwanda of the International Tribunal for Rwanda of 3 June 1999*** (the Memorandum of Understanding). The Convention on the Privileges and Immunities of the United Nations**** of 13 February 1946 (the General Convention) is also relevant in so far as it is referred to in these legal instruments.

IMMUNITY UNDER THE STATUTE

2. The Statute does not expressly refer to the privileges and immunities accorded to defence counsel. Article 29 (2) states that the Judges, Prosecutor and the Registrar shall enjoy the privileges and immunities, exemptions and facilities accorded to diplomatic envoys, in accordance with international law. Article 29(3) provides that the staff of the Prosecutor and of the Registrar shall enjoy the privileges and immunities accorded to officials of the United Nations under articles V and VII of the General Convention. Article 29(4) of the Statute, however, reasonably covers defence counsel. Article 29(4) provides that " . . . persons, including the accused, required at the seat or meeting place of the International Tribunal for Rwanda shall be accorded such treatment as is necessary for the proper functioning of the International Tribunal for Rwanda."

3. While the Statute does not define the treatment that should be accorded under article 29(4), at a minimum such treatment would include immunity from legal process for words spoken or written and acts done in their capacity as defence counsel. This is in line with the Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders held in Havana, Cuba, from 27 August to 7 September 1990. In particular, principle 20 states that lawyers shall enjoy civil and penal immunity for relevant statements made in good faith in written

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* Security Council resolution 955 (1994) of 8 November 1994, annex.

** United Nations, *Treaty Series*, vol. 1887, p. 63.

*** *Ibid.*, vol. 2066, p. 5.

**** *Ibid.*, vol. 1, p. 15, and vol. 90, p. 327 (corrigendum to vol. 1).

or oral pleadings or in their professional appearances before a court, tribunal or other legal administrative authority.

4. The Statute is part of Security Council resolution 955 (1994) adopted under Chapter VII of the Charter of the United Nations. Therefore, all States have an obligation to accord to defence counsel such treatment as is necessary for the proper functioning of the ICTR.

Immunity under the Headquarters Agreement

5. The Headquarters Agreement concluded with the United Republic of Tanzania is unequivocal as regards the privileges and immunities of ICTR defence counsel. Article XIX, paragraph 1, provides that counsel who has been admitted as such by the ICTR shall not be subjected by the host country to any measure which may affect the free and independent exercise of his or her functions under the ICTR Statute.

6. Article XIX, paragraph 2 states that, in particular, counsel shall, when holding a certificate that he or she has been admitted as counsel by the ICTR, be accorded: (a) exemption from immigration restrictions; (b) inviolability of all documents relating to the exercise of his or her functions as a counsel of a suspect or accused; and (c) immunity from criminal, civil and administrative jurisdiction in respect of words spoken or written and acts performed by him or her in his or her official capacity as counsel. Such immunity shall continue to be accorded to him or her after termination of his or her functions as a counsel of a suspect or accused.

7. Paragraph 3 of article XIX makes it clear that this article is without prejudice to such disciplinary rules as may be applicable to the counsel in accordance with the Rules of Procedure and Evidence of the ICTR. As such, counsel is not immune in relation to contempt of court, perjury, and other offences related to the proper administration of justice in the ICTR. The obligation to accord privileges and immunities provided for under the Headquarters Agreement applies in respect of the Government of Tanzania only.

Immunity under the Memorandum of Understanding

8. Pursuant to the Memorandum of Understanding concerning the ICTR Office in Rwanda, the Government of Rwanda extends: (a) to the Judges, the Prosecutor, the Registrar, the Deputy Prosecutor, and other key members (P-4 and above) of the Office whose names shall be communicated in advance to the Government of Rwanda for that purpose, the privileges, immunities, exemptions and facilities accorded to diplomatic envoys in accordance with international law; (b) to officials of the United Nations Secretariat assigned to the Office whose names shall be communicated to the Government of Rwanda for that purpose, the privileges and immunities to which they are entitled under articles V and VII of the General Convention; and (c) to other persons assigned to the Office whose names shall be communicated to the Government of Rwanda for that purpose, the privileges and immunities accorded to experts on mission for the United Nations, in accordance with article VI of the General Convention.

9. Defence counsel present in Rwanda in their official capacity would be covered by paragraph (c) above, and would therefore enjoy the privileges and immunities granted to experts on mission under article VI of the General Convention. Article VI of the General Convention accords to experts on mission the privileges and immunities that are neces-

sary for the independent exercise of their functions during the period of their missions, including the time spent on journeys in connection with their missions. In particular, experts on mission are accorded, among other things: immunity from personal arrest and detention and from seizure of their personal baggage; immunity from legal process of every kind in respect of words spoken or written and acts done by them in the course of the performance of their mission (which continues to be accorded notwithstanding that the person is no longer employed on mission for the United Nations); and inviolability for all papers and documents.

10. Defence counsel therefore enjoy immunity from personal arrest and detention, meaning that they must not be arrested or detained during the period of their missions, including the time spent on journeys in connection with their missions. It falls exclusively to the Secretary-General to determine whether or not defence counsel is on mission or on a journey in connection with their mission. Defence counsel also enjoy inviolability for their papers and documents, and functional immunity from legal process of every kind for words spoken or written and acts done in the course of the performance of their mission. Immunity from legal process includes immunity from legal proceedings to determine the applicability of that very immunity. The purpose of the immunity is to ensure the independent exercise of defence counsel's functions, without any interference that might inhibit either their ability to perform their functions, or their freedom to do so.

11. The obligation to accord privileges and immunities provided for under the Memorandum of Understanding applies in respect of the Government of Rwanda only. As a bilateral agreement, the Memorandum of Understanding does not have the effect of obliging other State parties to the General Convention to bring defence counsel within the scope of the General Convention or of its article VI.

Asserting or waiving immunity

12. The United Nations has consistently maintained the position that, pursuant to the General Convention and the Charter, it is for the Secretary-General, on behalf of the Organization, to afford experts on mission the functional protection they are entitled to when they are acting in the course of the performance of their mission. The Secretary-General has the exclusive authority, which he exercises judiciously, to determine whether certain words or acts fall within the course of a United Nations mission, and whether words and acts of defence counsel fall within his or her official capacity as counsel. It is not for States (including their courts) or defence counsel to make that determination.

13. Thus, when a State in which defence counsel enjoys the immunity from personal arrest and detention intends to arrest defence counsel, it must give the Secretary-General adequate and timely information about the reasons for the proposed arrest and detention so that he can determine whether the acts or words complained of fall within the course of the performance of the mission. The distinction between acts performed in the course of a mission and those performed in a private capacity is a question of fact which depends on the circumstances of the particular case.

14. There is no legal basis for asserting immunity if the Secretary-General determines that the matter is not related to official capacity or to the performance of a mission. In such a scenario, further intervention by the United Nations would rest on other legal or humanitarian considerations. For instance, the United Nations may seek to ensure that

the person is treated fairly, charged properly, and brought to trial promptly, in accordance with the minimum international standards.

15. Under the Headquarters Agreement, if the words or acts are within the official capacity of defence counsel, the Secretary-General has, pursuant to article XIX, paragraph 4, the right and duty to waive the immunity where it can be waived without prejudice to the administration of justice by the ICTR and the purpose for which it is granted. The Secretary-General has to examine each individual case in the light of its facts and the circumstances in order to ensure that a waiver will be without prejudice to the administration of justice by the ICTR and the purpose for which it is granted.

16. Similarly, under the Memorandum of Understanding, if the words or acts are found to be within the performance of the mission, the Secretary-General has, pursuant to article VI of the General Convention, the right and duty to waive the immunity 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. The obligation to consider the interests of the United Nations and to assess whether asserting immunity impedes the course of justice means that each individual case must be examined in the light of the facts and circumstances pertaining to it.

17. Defence counsel should always be aware that privileges and immunities are granted in the interests of the ICTR and not for their personal benefit. As such, privileges and immunities do not furnish an excuse for evading private obligations or for failing to observe laws and police regulations. Further, the United Nations is under an obligation to cooperate at all times with the appropriate authorities of Member States to facilitate the proper administration of justice and to prevent the occurrence of any abuse in connection with the privileges and immunities.

Regulations governing the Status, Basic rights and Duties of Officials other than Secretariat Officials, and Experts on Mission

18. The relevant provisions of the Regulations governing the Status, Basic Rights and Duties of Officials other than Secretariat Officials, and Experts on Mission* should be used as guidelines for the conduct of defence counsel when they enjoy immunity as experts on mission pursuant to the Memorandum of Understanding.

19. In particular, in line with regulation 2(d), while the personal views and convictions of defence counsel, including their political and religious convictions, remain inviolable, they should ensure that those views and convictions do not adversely affect their official duties or the interests of the ICTR. Further, consistent with regulation 2(d), defence counsel should conduct themselves at all times in a manner befitting their status. They should not engage in any activity that is incompatible with the proper discharge of their duties. They should also avoid any action and, in particular, any kind of public pronouncement that may adversely reflect on their status, or on the integrity and independence that are required by that status.

20. Finally, in keeping with regulation 2(e), defence counsel should not use their office or knowledge gained from their official functions for private gain, financial or otherwise, or for the gain of any third party, including family, friends and those they favour. Nor

* ST/SGB/2002/9 (18 June 2002).

should they use their office for personal reasons to prejudice the positions of those they do not favour.

26 August 2010

2. Procedural and institutional issues

(*a*) Interoffice memorandum to the Chief, Treaty and Legal Assistance Branch, United Nations Office on Drugs and Crime (UNODC), concerning the establishment of the International Anti-Corruption Academy in Laxenburg, Austria

Legal options for the establishment of an international organization—Treaty body under existing convention—United Nations subsidiary organ—Establishment under a bilateral or multilateral agreement—Legal basis or mandate required for the establishment of an international organization and for the participation of the United Nations therein

1. This is with reference to your memorandum of [date], which was sent in response to my memorandum of [date], concerning the establishment of the International Anti-Corruption Academy ("the Academy") in Laxenburg, Austria. You have stated that the decision that the Academy should be established as an international organization has been taken after in-depth considerations of various options by all partners, that it is a consensual decision of the Steering Committee in charge of overseeing the establishment of the Academy, comprising representatives of all partners, and that it has been confirmed by the principals of those partners. Nevertheless, you seek more detailed advice on the possible legal status of the Academy, as outlined in paragraph 4 of my memorandum referred to above.

2. In my memorandum of [date], I outlined the possible legal options for the establishment of the Academy, that it could be established through various possible means, including: (i) as a treaty body under the Conference of the States Parties to the Convention Against Corruption* (COP), (ii) as a United Nations subsidiary organ, (iii) through a bilateral agreement between the United Nations and the Government of Austria, or (iv) through a multilateral agreement. In this regard, we note that each of these options would require that an appropriate mandate be provided by the relevant policy making organs to the Organization, including in its capacity as the secretariat of the COP, to undertake certain acts towards the establishment and operation of the Academy. These options would also have different implications for the establishment and functioning of the Academy, as well as for the role to be played by the United Nations. In this respect, as further explained below, the instruments referred to in your memorandum do not provide a sufficient legal basis for the Organization to participate in the establishment and operation of the Academy. Those instruments to which your memorandum referred were the Convention Against Corruption, resolutions 3/2 and 3/4 of the COP, the Economic and Social Council resolution 2009/22 of 30 July 2009, and a draft General Assembly resolution (A/C.2/64/L/37), entitled "Preventing and combating corrupt practices and transfer of assets of illicit origin returning such assets, in particular to the countries of origin, consistent with the United

* United Nations, *Treaty Series*, vol. 2349, p. 41.

Nations Convention against Corruption", which was subsequently adopted as General Assembly resolution 64/237 on 24 December 2009.

Establishing the Academy as a treaty body under the Convention Against Corruption

3. Pursuant to General Assembly resolution 58/4 of 31 October 2003, as reflected in section 6.2 (b) of the Secretary-General's bulletin ST/SGB/2004/6 of 15 March 2004, entitled "Organization of the United Nations Office on Drugs and Crime" ("the Secretary-General's Bulletin"), UNODC serves as the secretariat of the COP to the United Nations Convention Against Corruption ("the Corruption Convention") in order to assist the COP in carrying out its functions. Under article 64, paragraph 2 (a) of the Corruption Convention, the secretariat shall "[a]ssist the Conference of the States Parties in carrying out the activities set forth in article 63 of this Convention". Article 63, paragraph 7 of the Corruption Convention stipulates that, pursuant to paragraphs 4 to 6 of article 63, the COP "shall establish, if it deems it necessary, any appropriate mechanism or body to assist in the effective implementation of the Convention". Article 63, paragraph 4 (a) in turn states that the COP shall agree upon activities, procedures, and methods of work to facilitate the "activities by States Parties under articles 60 and 62 and chapters II to V of this Convention". We note that article 60 of the Corruption Convention pertains to training and technical assistance, article 62 pertains to other measures for the implementation of the Corruption Convention through economic development and technical assistance, and that chapters II to V concern preventive measures, criminalization and law enforcement, international cooperation, and asset recovery, respectively. We also note that article 60 on training provides, *inter alia,* in paragraph 3 that: "States Parties shall strengthen, to the extent necessary, efforts to maximize operational and training activities in international and regional organizations and in the framework of relevant bilateral and multilateral agreements or arrangements."

4. As you have stated, the need to facilitate training is identified in article 60 of the Corruption Convention, and you have informed us that training and technical assistance have been identified as a priority by the COP. However, we are of the view that the Corruption Convention in and of itself, including article 60 on training, does not provide a sufficient basis to establish a new body, i.e., the Academy, under the Convention (with or without other partners). Furthermore, we note from resolutions 3/2 and 3/4, adopted by the COP at its third session held in Doha, Qatar, in November 2009, that the COP is supportive of the establishment of the Academy, insofar as the preambular paragraphs on the Academy contained in those resolutions state, *inter alia,* that the COP has welcomed "the initiative of the [International Criminal Police Organization (INTERPOL), UNODC] and the Government of Austria, with the support of the European Anti-Fraud Office and other partners, to work collaboratively towards the establishment of the International Anti-Corruption Academy". However, neither such statements nor the adoption of such resolutions in and of themselves provides a sufficient basis or mandate to establish the Academy as a treaty body under the Convention. Rather, a specific mandate to that effect would be required from the COP providing that the Academy would be established by the COP itself, as a treaty body of the Corruption Convention in accordance with Article 63, paragraph 7.

5. In order to achieve the foregoing objective, we suggest that the COP request UNODC to submit a proposal for its consideration on the establishment of the Academy as a treaty body under the Corruption Convention. Issues such as the status, statute (if necessary), functions, governing structure, partnering organizations of the Academy should be addressed in the COP decision establishing the Academy. The COP's decision should also specify the role to be played by UNODC, as the secretariat to the COP, in the administration and operation of the Academy. The parameters of UNODC's role in administrating and operating such a body would also have to be limited to, and determined by, the language of the Corruption Convention, as well as the relevant decisions of the COP.

6. We understand that there is a desire for the proposed Academy to establish relationships with INTERPOL and the European Anti-Fraud Office (OLAF) in regards to anti-corruption training. We see no legal obstacle for the Academy, as a body established by the COP, to enter into relationship agreements with those and other entities for such purpose.

Establishing the Academy as a United Nations subsidiary organ

7. We recall that the Charter of the United Nations (hereinafter the "Charter") specifically confers the right to create subsidiary organs upon the General Assembly and the Security Council. In accordance with Articles 22 and 29 of the Charter, both the General Assembly and the Security Council may establish such subsidiary organs as they deem necessary for the performance of their functions. Article 68 of the Charter also states that the Economic and Social Council "shall set up commissions in economic and social fields and for the promotion of human rights, and such other commissions as may be required for the performance of its functions".

8. We note that certain training and research institutes have been established as subsidiary organs of the United Nations. For example, the General Assembly in its resolution 1827 (XVII) of 18 December 1962 requested "the Secretary-General to study the desirability and feasibility of establishing a United Nations institute or a training programme under the auspices of the United Nations, to be financed by voluntary contributions both public and private". The Secretary-General's plans were discussed and endorsed by the Economic and Social Council (see E/2780), and the General Assembly requested the Secretary-General to take the necessary steps to establish the United Nations Institute for Training and Research (UNITAR) in its resolution 1934 (XVIII) of 11 December 1963. Furthermore, the United Nations Institute for Disarmament Research (UNIDIR) was established pursuant to General Assembly resolution 34/83M of 11 December 1979 to undertake independent research on disarmament and related international security issues. Its statute was approved by the General Assembly in its resolution 39/148H of 17 December 1984. Finally, the United Nations Interregional Crime and Justice Institute (UNICRI) was established pursuant to Economic and Social Council resolution 1086B (XXXIX) of 30 July 1965, initially as the United Nations Social Defence Research Institute (UNSDRI), to contribute, through, *inter alia,* research and training, to the formulation and implementation of improved policies in the field of crime prevention and control. UNSDRI was subsequently renamed and established as UNICRI, and UNICRI's Statute was adopted by Economic and Social Council resolution 1989/56 of 24 May 1989.

9. If it is desirable to establish the Academy as a subsidiary organ of the United Nations, the necessary and appropriate legislative mandate must be provided by the Gen-

eral Assembly or by the Economic and Social Council. In this connection, we note that the Economic and Social Council in its resolution 2009/22 of 30 July 2009 welcomed "the initiative of [INTERPOL, UNODC] and the Government of Austria, with the support of the European Anti-Fraud Office and other partners, to work collaboratively towards the establishment of an international anti-corruption academy". The resolution further states that the Economic and Social Council "looks forward to the academy becoming fully operational in the shortest possible time and contributing to the building of capacity in the area of countering economic fraud and identity-related crime, as well as corruption". While the resolution does not provide a mandate for the Academy to be established as a subsidiary organ of the Economic and Social Council, such a mandate could be sought pursuant to this resolution. Alternatively, a mandate could be sought from the General Assembly to establish the Academy as a subsidiary organ of the General Assembly. The resolution establishing the Academy as a subsidiary organ would also specify, *inter alia,* its functions, e.g., in the Statute of the Academy to be adopted by the resolution (if necessary), governing structure, and financial and administrative arrangements.

10. In this respect, were the Academy to be established as a United Nations subsidiary organ, it would be subject to United Nations regulations, rules, policies and procedures. In addition, as a United Nations entity, the overall responsibility for the administration, management and operation of the Academy would vest with the United Nations. Other partnering organizations and Governments, including INTERPOL, the European Anti-Fraud Office and the Government of Austria, would have less substantive roles and responsibilities in the administration, management and operation of the Academy. In this regard, and based on the information provided to this Office, it is unclear whether it would be appropriate for the Academy to be established as a United Nations subsidiary organ.

Establishing the Academy through a bilateral agreement between the United Nations and the Government of Austria

11. The Academy could be established through an agreement between the United Nations and the Government of Austria, provided that an appropriate mandate as described above, is obtained. From the information you have provided and from our conversations with [Name], we understand that a bilateral arrangement is not a viable option.

Establishing the Academy through multilateral agreement

12. A diplomatic conference could be organized through the COP, under the auspices of the Economic and Social Council, or independently, to negotiate a multilateral treaty to establish the Academy as an independent international organization. The role of the United Nations could be specified, as appropriate, in the multilateral agreement. This option would have the benefit of including a larger number of States in the creation of the Academy. However, it may take a significant amount of time and resources to reach a consensus on the text of the agreement. Furthermore, it may take time for the agreement to enter into force. In view of the above, and given our understanding that the intention of the interested parties is to establish the Academy as soon as possible, this option does not appear to be viable.

Conclusion

13. Based on the information provided to this Office thus far, the establishment of the Academy as a treaty body under the Corruption Convention appears to represent the most feasible option available to UNODC, for the reasons set forth above. This office remains available to work with you concerning this and the other options discussed above.

19 January 2010

(*b*) Letter to the President of the Economic and Social Council concerning the allocation of seats on the Committee on Economic, Social and Cultural Rights

Allocation of seats on the Committee on Economic, Social and Cultural Rights—Rotation of a seat between regional groups with equal numbers of parties to the Convention

I would like to refer to your letter of [date] to the Legal Counsel forwarding a letter of the same date from the Permanent Representative of [State] in his capacity as Chairman of the [Regional Group]. You have requested that the Office of Legal Affairs provide a written opinion by [date] to the question raised in the Permanent Representative of [State's] letter, which concerns the allocation of seats on the Committee on Economic, Social and Cultural Rights ("Committee"), that consists of experts from States that are Parties to the 1966 International Covenant on Economic, Social and Cultural Rights* ("the Convention"). Bearing in mind the extremely short period we have been given, I would like to respond as follows:

The Committee was established pursuant to paragraph (b) of Economic and Social Council resolution 1985/17 of 28 May 1985 which reads as follows:

> "The Committee shall have eighteen members who shall be experts with recognized competence in the field of human rights, serving in their personal capacity, due consideration being given to equitable geographical distribution and to the representation of different forms of social and legal systems; to this end, fifteen seats will be equally distributed among the regional groups, while the additional three seats will be allocated in accordance with the increase in the total number of States parties per regional group."

We understand that fifteen seats are distributed evenly among the five regional groups, i.e., Africa, Asia, Eastern Europe, Latin American and Caribbean ("GRULAC") and the Western European and Others Group ("WEOG"), i.e., three seats each. The remaining three seats are allocated to the three regional groups that have the largest number of Parties to the Convention, which we understand were previously Africa, Asia and WEOG. However, recently the number of States Parties from GRULAC has increased to exactly the same number of States Parties from WEOG, i.e., twenty-seven.

The Permanent Representative from [State] has, in light of the fact that WEOG and GRULAC now hold an equal number of seats, requested advice on the following compromise arrangement for purposes of the upcoming election:

> "Is an arrangement between GRULAC and WEOG, whereby the one additional seat currently allocated to WEOG would rotate during the next two four-year periods

* United Nations, *Treaty Series*, vol. 993, p. 3.

between the two regional groups, this arrangement being implemented regardless of the number of ratifications of each group during these periods, in accordance with Economic and Social Council resolution 1985/17 of 28 May 1985 and the Rules of Procedure of the Economic and Social Council?"

In the first instance, we would point out that, in accordance with Economic and Social Council resolution 1985/17 of 28 May 1985, when the number of States Parties in a particular Regional Group has surpassed that of a Group holding an extra seat, the seat has been rotated at a subsequent election to ensure that the three additional seats are equally allocated to those three Groups that hold the highest number of seats.

Should the Economic and Social Council decide upon the allocation of one of the additional seats for a period of eight years by dividing it between two Regional Groups respectively, then this would prevent flexible rotation within this period based upon the criteria set out in resolution 1985/17.

As to this arrangement being consistent with the Rules of Procedure of the Economic and Social Council, we would point out that the Rules deal, *inter alia*, with voting and the election of candidates and do not deal with the regional allocation of seats to the various bodies that the Economic and Social Council elects. As such, we do not see this arrangement as being inconsistent with the Rules of Procedure of the Economic and Social Council.

Our understanding is also that WEOG have agreed that their additional seat be given to GRULAC subject to the understanding that it reverts to WEOG in four years time.

Thus, should it be the wish of the Economic and Social Council, then we would recommend that it adopt a decision stating that notwithstanding the provisions of resolution 1985/17 of 28 May 2005, the one additional seat currently held by WEOG shall be held by GRULAC for a four-year term beginning on 1 January 2011 and ending on 31 December 2014 and it shall then be allocated to WEOG for the period 1 January 2015 to 31 December 2018. This arrangement would apply during the periods mentioned above, notwithstanding the number of ratifications received by any of the regional groups.

The Economic and Social Council, may, if it wishes to do so, also decide that the allocation of seats decided upon in paragraph (b) of resolution 1985/17 shall then apply effective 1 January 2019.

Finally, I would recommend that you informally convey the content of this letter to the Coordinators of all the Regional Groups, with a view to a decision being arrived at that has the Economic and Social Council's approval.

28 April 2010

(*c*) E-mail to the Senior Deputy Director, Head of Legal Affairs, International Maritime Organization, concerning the circulation of a letter as a document of the International Maritime Organization

Documents to be circulated by the United Nations and its specialized agencies must fall under an agenda item—Sovereign right of States to circulate relevant documents that are submitted by a duly accredited representative, that do not exceed page limitations and that are not blatantly inflammatory, potentially

LIBELLOUS OR CONTAIN PROTECTED OR CONFIDENTIAL MATERIAL OR LANGUAGE—STRONG CRITICISM OF A MEMBER STATE IN A DOCUMENT DOES NOT JUSTIFY REFUSAL TO CIRCULATE

This is further to your e-mail [. . .] concerning a letter from the Permanent Representative of [State] to the Secretary-General of the International Maritime Organization (IMO) dated [date] by which the Permanent Representative transmits a letter to the IMO from the "Representative of the [Entity]" in London. The Permanent Representative requests that the text of his letter and its annex, i.e., the letter from the [Entity] be circulated as a document of the IMO. You seek our advice on this request.

In the first instance, we are only in a position to advise on what the practice has been in the General Assembly, which can briefly be described as follows:

In order for the Secretariat to circulate a document from a Member State as a document of the General Assembly it must fall under an agenda item of the Assembly or be for purposes of requesting a supplementary agenda item. Thus, there have been occasions in the past, where the Secretariat has declined requests to circulate a document from a Member State as it did not fall under any approved agenda item and did not constitute a formal request for a supplementary item.

Secondly, should the above conditions be met, then the practice of the United Nations Secretariat has been that Member States have the right to circulate any document they deem appropriate. 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 libellous. The fact that a document contains a strong criticism of another Member State has not in the past justified the Secretariat's refusal to circulate a document. However, should a document contain potentially libellous, 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.

In this particular case, should you wish to follow the practice outlined above then there is no clear basis upon which this request from a Member of the IMO can automatically be denied based upon the fact that it attaches a letter from the [Entity].

However, you can highlight to the [State's] Permanent Representative that the IMO and its Committees have a technical mandate. Any communication from a Member State should fall under an agenda/draft agenda item for the upcoming session of the Maritime Safety Committee in London. The IMO would not be in a position to circulate a document in advance of the meeting unless there was clearly an agenda/draft agenda item that the document could be circulated under.

The [State's] Permanent Representative should accordingly be requested to identify exactly which agenda/draft agenda item for this upcoming session the letter should be circulated under and if you think it appropriate informally asked to submit a revised letter that is more suited to the technical mandate of the Maritime Safety Committee.

6 May 2010

(*d*) Interoffice memorandum to the Chief, Human Rights Council Branch, Office of the High Commissioner for Human Rights (OHCHR), concerning the publication of the national report of [State 1] with reference to "Republic of China (Taiwan)" in the report

Reference by the United Nations to "Taiwan" should read "Taiwan, Province of China"—The United Nations cannot change the content of documents submitted for circulation by Member States—The United Nations can add explanatory footnotes to documents submitted for circultation by Member States

1. I wish to refer to your memorandum to [name] of this Office of [date] in which you seek our advice concerning a national report submitted by [State 1] under the Universal Periodic Mechanism ("UPR") of the Human Rights Council ("HRC"). You indicate that in paragraphs 45 and 76 of its report [State 1] refers to "assistance provided by and activities carried out with the 'Republic of China (Taiwan).'" You indicate that representatives of [State 2] have strongly objected to publication of a national report that includes this reference and have argued that its publication by the Secretariat is in violation of General Assembly resolution 2758 (XXVI) of 25 October 1971. [State 1] has refused to change its report and you seek our advice in the matter.

2. The question of "Taiwan" in the United Nations is regulated by General Assembly resolution 2758 (XXVI) of 25 October 1971 [. . .], entitled, "Restoration of the lawful rights of the People's Republic of China in the United Nations". By that resolution, the General Assembly decided to recognize "the representatives of the Government of the People's Republic of China [as] the only lawful representatives of China to the United Nations" and "to restore all its rights to the People's Republic of China and to recognize the representatives of its Government as the only legitimate representatives of China to the United Nations."

3. Since the adoption of that resolution the United Nations considers "Taiwan" as a province of China with no separate status, and the Secretariat strictly abides by this decision in the exercise of its responsibilities. Thus, since the adoption of this resolution the established practice of the United Nations has been to use the term "Taiwan, Province of China" when a reference to "Taiwan" is required in United Nations Secretariat documents.

4. However, the practice of the United Nations when circulating a document from a Member State has been to reproduce the document as it has been received and not to alter the terminology employed. The United Nations cannot change its contents as this would be tantamount to interfering in the official/national position of a Member State. Full responsibility for the substance of a communication remains with the Member State requesting its circulation.

5. We accordingly agree with the view expressed in your memorandum that OHCHR does not have the authority to change the content of a national report submitted by [State 1], notwithstanding the fact that the terminology used is not consistent with General Assembly resolution 2758 (XXVI) of 25 October 1971. Secondly, this is a national report submitted by [State 1] under the UPR established by the HRC. Thus, the Secretariat cannot refuse to circulate the document on the grounds that it falls outside the parameters of work of the HRC.

6. Nevertheless, we concur with you that a footnote can be added to [State 1's] national report in light of resolution 2758 (XXVI). We note that the footnote which you recommend reads as follows: "In accordance with United Nations terminology, reference to Taiwan in the present document should read Taiwan, Province of China." You indicate that, "this option, which remains unsatisfactory to [State 2], would allow the Secretariat to include a reference to the correct denomination of "Taiwan", without making substantive changes to the national report of [State 1]."

7. However, the footnote as it has been drafted indicates that the reference to "Taiwan" in the report submitted by [State 1] is incorrect. [State 1] could object to the footnote on the grounds that this is inconsistent with its national position. They could also point out that the Secretariat should not comment on terminology contained in the submission of a Member State as this would be interfering in the inter-governmental process.

8. We would therefore recommend the following footnote used in General Assembly documents [document symbol A], [document symbol B], [document symbol C] and [document symbol D] on "Taiwan" be followed:

> "The document has been reproduced as received. The designations employed do not imply the expression of any opinion whatsoever on the part of the Secretariat of the United Nations concerning the legal status of any country, territory or area, or of its authorities."

9. In communicating with both [State 2] and [State 1] on this matter you should point out that the Secretariat is merely following existing editorial practice in this regard and that the use of this footnote is without prejudice to the position of any Member State on "Taiwan".

27 October 2010

(*e*) Interoffice memorandum to the Assistant Secretary-General for Human Resources Management concerning the recognition of Kosovo nationals

Recognition of States is a matter for States only, not for the Secretariat—The Organization follows the decisions of its principal organs regarding State recognition—"Status neutrality"

[. . .]

2. At the outset, I should like to clarify the approach taken by the Secretary-General following the "Unilateral Declaration of Independence" (UDI) by the authorities in Kosovo in 2008 and the Advisory Opinion rendered by the International Court of Justice at the request of the General Assembly on the question: "Is the unilateral declaration of independence by the Provisional Institutions of Self-Government of Kosovo in accordance with international law?"*

3. Following the UDI and in light of the stalemate in the Security Council on the matter and the continuing mandate of the United Nations Interim Administration Mission in Kosovo (UNMIK) [. . .] under Security Council resolution 1244 (1999), the Secretary-

* *Accordance with international law of the unilateral declaration of independence in respect of Kosovo*, *Advisory Opinion,* forthcoming in *I.C.J. Reports 2010.*

General has maintained a "status neutral" approach with respect to Kosovo. This approach continues to obtain following the International Court of Justice Advisory Opinion. The Opinion only addressed the legality of the act of promulgating the declaration, and did not pronounce on the legality under international law of the subsequent actions taken by the authors of the declaration and other parties. Accordingly, the status of Kosovo remains unaffected by the Opinion, as does the status of UNMIK.

4. The recognition of States is a matter for States only and not for the Secretariat. The fact that a number of States, not only European, have recognized Kosovo as a State is not determinative for the Organization. The Organization will be guided by the decisions of its Principal Organs, the General Assembly and Security Council. In this regard, I note that to date neither Organ has pronounced itself on the status of Kosovo, following the UDI.

5. Turning to the issue of "Kosovo nationality", it is clear from the foregoing that we will not be able to accede to the request and that the current practice should continue. Any deviation from the current practice would imply a change in the Secretariat's position of "status neutrality" in circumstances of continuing political divisions within the United Nations membership on this issue. Accordingly, we have advised at Headquarters, UNMIK, and the United Nations System Organizations to find pragmatic solutions to problems that involve the status issue, on a case-by-case basis. For example, we could consider permitting home leave travel to Kosovo without formally recognizing Kosovo nationality.

[. . .]

24 November 2010

3. Liability and responsibility of the United Nations

(*a*) Interoffice memorandum to the Director of the United Nations Mine Action Service (UNMAS), Department of Peacekeeping Operations (DPKO) concerning an invitation from [a development organization] to UNMAS to provide an expert on demining to a tender assessment panel

Participation of a United Nations staff member on a tender assessment panel of an external organization—Participation in official capacity does not constitute outside employment or activity—Staff members prohibited from seeking or accept ing instructions from any source external to the United Nations—Liability of the staff member and the United Nations—Privileges and immunities of the United Nations—Doctrine of *respondeat superior*—Fiduciary duty of United Nations staff member to other organization violates the Charter of the United Nations and Staff Regulations and Rules—Participation of a staff member in an official capacity in a non-decision making, non-policy making, advisory capacity is not legally objectionable

1. This refers to your memorandum of [date], seeking the Office of Legal Affairs' (OLA) urgent advice on the issue of the appropriateness of a staff member of the Mine Action Service participating on a tender assessment panel (the "Panel") constituted by the [development organization]. Such participation would be at [the development organization]'s

invitation. This also refers to the e-mail from [the development organization] to the staff member, dated [date] (the "[development organization] e-mail"). [. . .]

2. You indicated in your memorandum of [date] that the concerned staff member is "well known and respected throughout the mine action community, where he has worked for the past 15 years, nine of which have been with the United Nations". We understand that the staff member would be participating on the Panel in his official capacity, that there is no intention for [the development organization] to provide compensation to the United Nations or the staff member in return for his participation on the Panel, the staff member would fulfill his role during regular office hours by distance (i.e., there is no requirement to travel to the [country of origin of the development organization] or elsewhere in order to participate on the Panel[1]) and UNMAS is supportive of [the development organization]'s request for the staff member to participate as a member of the Panel. OLA has requested that UNMAS clarify, with [the development organization], whether the staff member's role would be in an advisory or a decision-making capacity. [The development organization] has not responded to UNMAS on this matter as of the date of this memorandum.

3. At the outset, we would like to emphasize that, inasmuch as the UNMAS staff member would be participating on such Panel in his official capacity and representing the views of the United Nations, he would not be engaging in an outside activity or occupation. Consequently, the appropriateness of the participation of the staff member on the Panel cannot be determined by reference to staff regulation 1.2 on "Outside Employment and Activities" or Administrative Instruction, ST/AI/2000/13, of 25 October 2000, entitled "Outside Activities". The foregoing staff regulation and Administrative Instruction concern the engagement by staff members in activities outside the course of their official functions and not as representatives of the United Nations. Thus, they are not applicable to the present issue of staff members' participation in their official capacity on panels constituted by Member States.

4. Of particular importance to the present issue are Article 100 of the Charter of the United Nations, as well as staff regulation 1.1 (a) and (b), staff regulation 1.2 on "General Rights and Obligations", staff rule 1.2 (i) and staff rule 1.2 (r).

5. Pursuant to Article 100 of the Charter of the United Nations:

> "1. In the performance of their duties the Secretary-General and the staff shall not seek or receive instructions from any government or from any other authority external to the Organization. They shall refrain from any action which might reflect on their position as international officials responsible only to the Organization."
>
> "2. Each Member of the United Nations undertakes to respect the exclusively international character of the responsibilities of the Secretary-General and the staff and not to seek to influence them in the discharge of their responsibilities."

[1] We note, however, that the [development organization] e-mail states in the final row of the table contained in that e-mail that the anticipated time commitment in order to moderate all scores following the 'invitation to tender' will require a one-day meeting with other panel members probably in [City]. In such case, responsibility for the costs of any such travel should be clarified. If such travel is to be provided by [the development organization], then this should be done in accordance with the United Nations Financial Regulations and Rules and applicable administrative issuances.

6. The aforementioned Staff Regulations and Rules elaborate on the exclusively international nature of staff members' work and functions and prohibit staff members from seeking or accepting instructions in regard to the performance of their duties from any Government or other source external to the Organization. Consequently, any participation by a United Nations official on the Panel must comply with the spirit and letter of Article 100 of the Charter of the United Nations, as well as with the aforementioned Staff Regulations and Rules.

7. Were the staff member to participate on the Panel in a *decision-making role,* his actions or omissions not only could result in legal liability for the staff member but also potentially for the Organization itself. For example, were a disqualified or otherwise unsuccessful vendor to seek to appeal [the development organization]'s decision to either disqualify them or not to award a contract, such appeal would be subject to the applicable laws of the [country of origin of the development organization]. Moreover, the appeal and the actions of the staff member could fall within the jurisdiction of the national courts or administrative tribunals of the [country of origin of the development organization]. Furthermore, the disgruntled bidder could seek to sue the staff member or the Organization (the Organization's potential liability being derivative under the doctrine of *respondeat superior*). Thus, if the staff member were acting in a decision-making capacity on behalf of [the development organization], it might not be possible to maintain the privileges of the United Nations with respect to the submission of such matters to the [country of origin of the development organization's] legal system, and this would be inconsistent with the status and privileges and immunities provided under the 1946 Convention on the Privileges and Immunities of the United Nations.*

8. Furthermore, should the staff member be required to undertake a decision-making role on the Panel, he would owe a fiduciary duty toward [the development organization] and be subject to the instructions of relevant bodies of [the development organization], e.g., the relevant procurement or ethics offices. Any such fiduciary duties required of United Nations staff members would be inconsistent with their duties and obligations of loyalty to the Organization, as well as, as noted above, the prohibition against receiving instructions from any authority external to the Organization as set forth in the Charter of the United Nations and the United Nations Staff Regulations and Rules.

9. For the reasons set out above, therefore, it would not be appropriate for the United Nations staff member to serve in any direct, decision-making capacity in the [the development organization's] Panel. If, on the other hand, [the development organization] confirms that the role of the staff member in the Panel would be in his official capacity and limited to a *non-policy making, non decision-making and advisory capacity* only, we consider that the staff member's participation would not be legally objectionable and, in such circumstances, would essentially be a policy matter for UNMAS. If UNMAS is supportive of the proposed arrangement, you may wish to consult with the Ethics Office, in advance, as that Office is developing procedures for these types of advisory service arrangements.

5 May 2010

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

(*b*) Interoffice memorandum to the Assistant Secretary-General, Programme Planning, Budget and Accounts, Controller, concerning a third-party claim against the United Nations Mission in Liberia (UNMIL) from [the Society]

Compensation for non-consensual use of premises—Fair rental value—In the absence of rental rates established during a pre-mission technical survey, the amount of compensation payable should be assessed taking account of comparable market rental data—Need to confirm the legal status of owner of premises—Payment of compensation subject to signature of appropriate release—Notification to government

1. This is with reference to your memorandum, dated [date], requesting the Office of Legal Affairs' (OLA) advice in connection with a recommendation by UNMIL to pay compensation in the sum of $36,000 in full and final settlement of a third party claim. The claim was submitted by [the Society] and relates to the non-consensual use by UNMIL of premises located in [the Premises]. As the recommended amount exceeds the financial authority delegated to UNMIL for the settlement of third party claims, the Mission has forwarded the claim to your Office for approval.

[. . .]

Summary and conclusion

3. Based on the information provided, OLA agrees that [the Society] is entitled to compensation for UNMIL's non-consensual use of the Premises during the period from [date] to [date]. For the reasons set out in paragraphs 8–10 below, however, we recommend that a number of issues be confirmed by UNMIL prior to any payment being made to the claimant. We also recommend that, in accordance with established practice, a signed release be obtained from the claimant before any payment is made to it, that the amount of compensation paid by UNMIL be notified to the Government of Liberia pursuant to Section 16 of the UNMIL Status-of-Forces Agreement, and that UNMIL reserve the right to seek reimbursement from the Government of Liberia for such amount.

Background

4. The detailed background of this matter is described in the Minutes of the UNMIL Local Claims Review Board (LCRB) Meeting Nos. [numbers]. The salient facts may briefly be summarized as follows:

(*a*) The Premises were first occupied by the [UNMIL contingent] in June 2005. The Premises consisted of 12 lots of land and included a warehouse, an office building, a four bedroom guesthouse, a cafeteria and a security house.

(*b*) In its letter to UNMIL of [date], [the Society] claimed compensation, in the sum of $204,000, for UNMIL's occupation of the Premises from [date] to [date] (i.e., 3 years x $68,000 per annum). In the same letter, [the Society] waived its previously asserted claim for compensation in respect of UNMIL's occupation of the Premises prior to [date].

(*c*) On [date], UNMIL and [the Society] entered into a lease agreement for 8 of the 12 lots of land comprised in the Premises for a period of one year commencing on [date] (the "2009 Lease Agreement"). The rent payable under the 2009 Lease Agreement was $1,000

per month. In its letter to UNMIL of [date], [the Society] claimed that, notwithstanding the conclusion of the 2009 Lease Agreement, UNMIL continued to occupy the entire 12 lots of land and that a claim for rent would, therefore, continue to accrue in respect of the additional 4 lots.

(*d*) [The Society]'s claim was first reviewed by the LCRB in its Meeting No. [number] held on [date]. At that meeting, the LCRB agreed that [the Society] was entitled to compensation for the non-consensual use of the Premises by UNMIL during the period from [date] to [date]. With regard to the amount of compensation payable, the LCRB considered data provided by the UNMIL Regional Administrative Officer (RAO) as to the rents paid by UNMIL staff for accommodation in the locality.[1] Based on the data provided by the UNMIL RAO, the LCRB recommended that compensation in the sum of US$72,000 (i.e., 3 years x $26,000) be paid to the claimant.

(*e*) Following concerns raised by the UNMIL Director of Mission Support that the amount of compensation recommended by the LCRB was higher than most rents paid by UNMIL in the regions, the LCRB reviewed the case again at its Meeting No. [number] held on [date]. At that meeting, the LCRB noted that, in accordance with General Assembly resolution 52/247 of 21 May 1997, compensation for the non-consensual use of premises should be based on the rates established by the pre-mission technical survey. The LCRB further noted, however, that in the case of UNMIL, no such rates had been established in the pre-mission technical survey. In the absence of such pre-established rates, the LCRB decided that the fair rental for the Premises should be established taking account of comparable market rental data.

(*f*) In this regard, the UNMIL Procurement Section provided data on the rents paid under other leases entered into by UNMIL. In particular, the UNMIL Procurement Section focused on a lease for "half an acre [of land] with a house of 4 bedrooms" concluded by UNMIL in 2005. Extrapolating from this data, the Procurement Section assessed that the fair market rental value for the Premises would be $1,000 per month.

(*g*) Based on the data provided by the UNMIL Procurement Section, the LCRB recommended the payment of compensation to [the Society] in the amount of $36,000 (i.e., $1,000 per month for a total of 36 months). The LCRB's recommendation was approved by the UNMIL Director of Mission Support on [date].

Analysis

5. The scope of the Organization's responsibility to compensate property owners for the non-consensual use of privately owned property is set out in the Secretary-General's reports entitled A/51/389 and A/51/903, dated 20 September 1996 and 21 May 1997, as

[1] The information provided by the RAO included a description of the buildings on the Premises, together with estimates of the number of personnel that could be accommodated in each building. According to the RAO, most of the buildings on the Premises had been repaired by the [UNMIL contingent] (including repairs to the roof, windows, doors, ceilings, electrical circuitry, plumbing and drainage works). The RAO also noted that the guesthouse had been refurbished by the United Nations High Commissioner for Refugees (UNHCR) but that its "roof was blown off by an UNMIL helicopter rotor wash". The LCRB Minutes do not specify the amounts expended by UNMIL or UNHCR for the renovation of the various structures, nor do the Minutes specify the monetary damages to the guesthouse.

endorsed by the General Assembly in resolutions 51/13 of 4 November 1996 and 52/247 of 26 June 1998, respectively.[2] In particular, A/51/389 provides that:

> "11. [. . .] the United Nations force may take temporary possession of land and premises—whether State or privately owned—as may be operationally necessary for the deployment of the force and the pursuance of its mandate.
>
> 12. The legality of the occupancy under these conditions does not, however, exempt the Organization from liability to pay adequate compensation or fair rental for privately owned property, while maintaining its right to seek reimbursement from the government pursuant to article 16 of the model status-of-forces agreement or the principle reflected therein."

6. Paragraph 10 (a) of General Assembly resolution 52/247 further provides that:

> "(a) Compensation for non-consensual use of premises shall either: (i) be calculated on the basis of the fair rental value, determined on the basis of the local rental market prices that prevailed prior to the deployment of the peacekeeping operation as established by the United Nations pre-mission technical survey team; or (ii) not exceed a maximum ceiling amount payable per square metre or per hectare as established by the United Nations pre-mission technical survey team on the basis of available relevant information; the Secretary-General will decide on the appropriate method for calculating compensation payable for the non-consensual use of premises at the conclusion of the pre-mission technical survey."

7. In the present case, the fact that the Premises were occupied by the [UNMIL contingent] for the period from [date] to [date] and that no lease agreement was concluded between UNMIL and [the Society] for that period is not in dispute. [The Society]'s claim in respect of UNMIL's occupation of the Premises was also submitted within the time limits set out in General Assembly resolution A/RES/52/247. In accordance with the relevant resolutions of the General Assembly referred to in paragraphs 5 and 6 above, therefore, we agree with the LCRB's assessment that the claimant is, *prima facie,* entitled to fair rental value for UNMIL's use of the Premises during the period in question.

8. We also agree with the approach taken by the LCRB that, in the absence of rental rates established during a pre-mission technical survey, the amount of compensation payable should be assessed taking account of comparable market rental data. Based on the documentation provided, however, it is not clear how the LCRB applied the comparison rental data when calculating the fair market rental value for the Premises.[3] We recommend, therefore, that, prior to any payment being made to the claimant, UNMIL should

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[2] Reports of the Secretary-General, "Administrative and budgetary aspects of the financing of the United Nations peacekeeping operations: financing of the United Nations peacekeeping operations".

[3] For example, the data provided by the UNMIL Procurement Section focused primarily on the rent payable for another property comprising 12 lots and a 4 bedroom house leased by UNMIL in 2005 (see paragraph 4 (f), above). It is not clear, however, whether any adjustments were made to this rental rate to take account of the additional buildings located on the current Premises, the renovations to the buildings carried out by UNMIL and UNHCR and/or the damage to the guesthouse caused by the UNMIL helicopter (see paragraphs 4 (a) and (d) above). The fair rental of $1,000 per month recommended by the LCRB is also the same as the rent payable under the 2009 Lease Agreement (which includes 8 lots of land only). The LCRB Minutes also make reference to an unspecified technical report that "was relevant to the year 2006". Based on the documentation provided, however, the relevance of this report is unclear.

confirm that all relevant factors for calculating the fair rental value of the Premises were duly taken into account by the LCRB at the time it made its recommendation.

9. Whilst it is a matter for UNMIL to satisfy itself that [the Society] is duly incorporated under the laws of Liberia and that it was the lawful owner of the Premises during the relevant period, we recommend that, prior to any payment being made to the claimant, UNMIL should confirm, in particular, that the fact that the [the Society]'s certificate of incorporation was "re-activated on [date]" does not in any way prejudice [the Society]'s legal position as the rightful owner of the Premises.[4] If necessary, UNMIL may wish to consider confirming the foregoing with the assistance of the appropriate Liberian authorities.

10. We note that the LCRB did not address [the Society]'s claim that, notwithstanding the conclusion of the 2009 Lease Agreement, UNMIL continued to occupy the entire area of 12 lots of land (and not just the 8 lots included in the 2009 Lease Agreement). Should [the Society]'s claim in this regard be founded in fact, we recommend that this matter be addressed by the LCRB with a view to reaching a full and final settlement of all outstanding rental claims relating to the Premises. In addition, if UNMIL intends to continue occupying the additional 4 lots prospectively, the necessary arrangements should be made to enter into a suitable leasing arrangement with [the Society].

11. Finally, in accordance with established procedures, we recommend that the payment of compensation to the claimant be made subject to the signature of an appropriate release. We also recommend that the amount of compensation paid by UNMIL be notified to the Government of Liberia pursuant to section 16 of the UNMIL Status-of-Forces Agreement, and that UNMIL reserve the right to seek reimbursement from the Government of Liberia for such amount.

[. . .]

3 June 2010

(*c*) Interoffice memorandum to the Director of the Division for Public Administration and Development Management, Department of Economic and Social Affairs (DESA), concerning the Secretary-General's and the Organization's relationship with the [Alliance]

Use of United Nations name and emblem—Express prohibition to use the United Nations name and emblem for non-official purposes without the express authorization of the Secretary-General—Legal implications of the Secretary-General's serving as honorary chairman of an alliance, particularly with regard to the privileges and immunities of the Organization and its precedential value—The Secretary-General's having agreed to serve as Honorary Chair does not constitute an endorsement by the Secretary-General or by the Organization

1. This memorandum responds to your memorandum of [date], requesting the Office of Legal Affairs' (OLA) advice concerning the "political and legal implications" of the

[4] As evidence of its legal title to the Premises, [the Society] has provided copies of a [Certificate], dated [date], and a letter from the [Ministry], dated [date], which states that [the Society] "now possessed legitimately twelve (12) acres of tribal public land in [the area of the Premises]". [The Society] has also provided copy of a [Certificate], dated [date], issued by the [Agency] (and re-activated on [date]).

Secretary-General's serving as the Honorary Chairman of the [Alliance]. In this connection, your memorandum stated that, without having obtained the prior approval of the United Nations, the "[Alliance] has been publicly using the Secretary-General's name in its correspondence." [. . .]

Establishment and status of the [Alliance]

2. As explained in the memorandum of [date], we understand that the [Alliance] is an "initiative" that was launched by the Secretary-General in 2006 as a direct response to paragraph 80 of the Tunis Agenda for the Information Society, adopted by the World Summit on the Information Society (WSIS) held in Tunis in 2005. The Tunis Agenda was endorsed by the General Assembly in its resolution 60/252, of 27 March 2006. Based on the information you have provided to OLA, we also understand that the main objective of [the Alliance] is to support and promote information and communication technology (ICT) activities as a means of advancing economic and social development. Such support and promotion of ICT activities is conducted through the cooperation of multiple types of public and private entities at the national, regional and international levels. The [Alliance], thus, is an unincorporated association that is open to a broad range of participation by private and public sector entities in the fields of ICT and development, including governments, businesses, civil society, international organizations, industry groups, professional associations, media, and academia. We understand that, as an unincorporated association, the [Alliance] does not have operational, policy-making or negotiating functions.

The [Alliance]'s use of the United Nations name and emblem

3. Your memorandum noted that, on its Website, the [Alliance] is displaying the name of the United Nations together with the United Nations emblem. Indeed, the uniform resource locator (URL) for the [Alliance]'s website is "www.un-[alliance].org", and OLA is not aware that the United Nations has authorized the [Alliance] to use the Organization's name, by way of an abbreviation thereof, in its website.[1] Moreover, the letterhead of the [Alliance] states that it is "supported by the Department of Economic and Social Affairs". Again, OLA is not aware that the [Alliance] has been given permission for the use of its name in its letterhead. Finally, as DESA pointed out to OLA in an e-mail message, dated [date], the [Alliance] has been using the United Nations name and emblem in its publications (see *[Alliance] Series 1: Foundations of the [Alliance]*). It is likewise not clear to OLA that the [Alliance] has specifically been authorized to use the name or emblem of the Organization in any of its publications.

4. As you may recall, General Assembly resolution 92 (I), of 7 December 1946, reserves the use of the United Nations name and emblem for the official purposes of the Organization and expressly prohibits the use of the United Nations name and emblem for non-official purposes without the express authorization of the Secretary-General. As noted above, OLA is not aware that the [Alliance] was ever authorized to use the name and emblem of

[1] A United Nations copyright designation appears at the bottom of the homepage of the website at http://www.un-[alliance].org. Thus, it may be the case that DESA has created or hosted the website of the [Alliance]. However, for the reasons discussed in this memorandum, such hosting of the [Alliance]'s website and its use of the "UN" in the URL is not appropriate, given that the [Alliance] is not a United Nations body and does not otherwise constitute an official programme or activity of the Organization.

the United Nations in connection with its activities. Moreover, Administrative Instruction ST/AI/189/Add.21 of 15 January 1979, entitled "Use of the United Nations emblem on documents and publications", provides that the name and emblem of the United Nations may only be used in official publications of the United Nations and of United Nations bodies. Insofar as the [Alliance] is an unincorporated association or a network of entities whose activities are funded by the voluntary contributions of its members and partners, the [Alliance] neither is a subsidiary organ of the General Assembly nor otherwise is an organ, programme or activity of the United Nations.[2] Accordingly, the [Alliance] does not constitute a "United Nations body" within the meaning of footnote 2 of that Administrative Instruction. In view of the foregoing, we concur with your office that the use of the Organization's name and emblem on the [Alliance]'s letterhead, in its publications and on its website should be discontinued immediately.

The Secretary-General's serving as Honorary Chair of the [Alliance]

5. With respect to the political and the legal implications of the Secretary-General's having agreed to serve as the "Honorary Chairman" of the [Alliance], in our recent meetings and e-mail exchanges, we have discussed that the functions and responsibilities of the Honorary Chair of the [Alliance] are not clear and do not appear to have been defined in any terms of reference or other similar document. We assume that, based on the term "honorary", the title is merely ceremonial and does not connote that the Secretary-General would have any official or functional role or powers with respect to the [Alliance]. In any event, as we also discussed, in light of the [Alliance]'s amorphous and uncertain legal status, the Secretary-General's having agreed to serve as the Honorary Chair of the [Alliance] could create the misleading impression that [Alliance] is a United Nations body, that [Alliance] activities are somehow affiliated with the official programme of work of the Organization, or that the activities of the many non-United Nations participants in the [Alliance], including those of governments or even private sector entities, are being endorsed by the Secretary-General and by the United Nations. While it might be understandable or even desirable for the Secretary-General to emphasize his support for the aims and activities of the [Alliance], showing such support through some sort of institutional linkage by serving as the [Alliance]'s Honorary Chairman may create confusion both with respect to the an institutional and operational relationship between the United Nations and the [Alliance] (or create the impression thereof), as well as in connection with the role of the Secretary-General in the operations of the [Alliance].

6. With respect to this latter point, the Secretary-General's serving as the Honorary Chair of the [Alliance] could subject the Organization to the risk that claims might be brought against the Secretary-General and/or the United Nations by third parties who might not appreciate the ceremonial nature of the role of "Honorary Chair" or who might not understand the fact that the [Alliance] is not a United Nations body or programme or activity. Even though we consider that neither the Organization nor the Secretary-General should be exposed to legal liability with respect to such claims, given that the [Alliance] is

[2] As far as we can determine, even though technical and administrative support to the [Alliance] is provided by DESA in the form of a "secretariat" for the [Alliance], pursuant to a technical cooperation assistance project of DESA, the [Alliance] has not been programmed by the General Assembly as a United Nations activity.

not a United Nations body, programme or activity, the Organization would have to deal with the fact of such claims and would have to provide some mode of settlement therefor, pursuant to the obligations of the United Nations set forth in article VIII, section 29 of the 1946 Convention on the Privileges and Immunities of the United Nations.* Thus, merely defending such claims, even if they had no merit, could expose the Organization to substantial legal costs. In addition, should it be determined that a third party was reasonable in considering that the United Nations and the [Alliance] were authorized to act jointly or on behalf of one another, given such involvement by the Secretary-General in the [Alliance], the Organization might not be able to avoid legal liability in respect of any such claims. Moreover, given the amorphous and legally uncertain legal status of the [Alliance] as an unincorporated association, were any such claim to be brought in courts of Member States, and were such courts to consider the Secretary-General's role in or relationship to the [Alliance] was something other than ceremonial, such claims could subject the Secretary-General or the Organization to the jurisdiction of such courts.[3] This would have serious implications with regard to the privileges and immunities of the United Nations and of the Secretary-General, including as set forth in the 1946 Convention on the Privileges and Immunities of the United Nations.

7. Finally, the Secretary-General's having agreed to serve as the Honorary Chairman of the [Alliance] could create a precedent and place the Secretary-General in a difficult position should similar requests be made in the future by unincorporated associations similar to the [Alliance] or by incorporated bodies. In light of the foregoing and to the extent that the Secretary-General desires to continue to lend his persona in support of the aims and activities of the [Alliance], you may wish to inform the [Alliance] and its participating persons and entities that the Secretary-General's role as the Honorary Chair will be limited to supporting the aims and activities and the general purposes of the [Alliance]. At the same time, in such circumstances, the [Alliance] should be informed that the Secretary-General's having agreed to serve as Honorary Chair should not be deemed to constitute an endorsement by the Secretary-General or by the Organization of the policies, the operations or any specific activities of [the Alliance], or of any of the non-United Nations participants in the [Alliance] or their activities.

[. . .]

9. For the reasons discussed above, absent specific written authorization by the United Nations, it is not appropriate for the [Alliance] to use the name or emblem of the United Nations nor the identity of the Secretary-General in promoting itself or its activities. Since [the Chair of the Alliance's Board of Directors] has not acknowledged your e-mail message of [date] calling for the [Alliance] to cease and desist doing so, we recommend that DESA now send a formal letter, perhaps signed by the Under-Secretary-General of DESA "on behalf of the Secretary-General", reiterating the content of your e-mail message of [date]. Should the [Alliance] fail to respond to that more formal communication, then this Office could send a cease and desist letter to the [Alliance] and evaluate with DESA whatever further action might be appropriately required to deal with this matter.

27 September 2010

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

[3] As noted in paragraph 5 of OLA's memorandum of [date], the Under-Secretary-General of DESA is apparently an "*ex officio*" member of the [Alliance]'s steering committee, which gives rise to similar concerns about his serving in such capacity.

4. Other issues relating to peacekeeping operations

(*a*) Note to the Under-Secretary-General, Department of Peacekeeping Operations (DPKO), regarding the United Nations Mission in Sudan (UNMIS) area of responsibility

Area of responsibility—Scope of ceasefire monitoring and verification mandate—Area of deployment—Freedom of movement of peacekeeping operation key component of the privileges and immunities necessary for the fulfillment of its mandate

1. This refers to your note dated [date] requesting the Office of Legal Affairs' (OLA) assistance with regard to the interpretation of what constitutes the area of responsibility (AOR) of UNMIS. As we understand from your note and UNMIS [code cable] dated [date], UNMIS military tasks are conducted in a ceasefire zone consisting of six sectors, designated Sector I-VI. [. . .] UNMIS asks for advice regarding the extent of its "area of responsibility" (AOR) [. . .].

The issue

2. In essence, the issue is whether UNMIS military tasks, consisting of ceasefire monitoring and verification, extend to the whole of Southern Kordofan State or, on the contrary, only a smaller portion of that State known as Nuba Mountain Area. [. . .] With regard to Sector VI, we understand that following the decision of the Permanent Court of Arbitration concerning the boundaries of Abyei, which has been accepted by both Sudanese parties, the area around Higlig and Kharsane has been placed outside the Abyei Area and into Southern Kordofan State. Since Sector VI covers the Abyei area, these areas now lie outside Sector VI. [. . .]

The UNMIS mandate

3. As background, it is helpful to briefly recall that the core element of the mandate of UNMIS, as set forth in Security Council resolution 1590 (2005) operative paragraph 4, is to support the implementation of "The Comprehensive Peace Agreement between The Government of The Republic of The Sudan and The Sudan People's Liberation Movement/Sudan People's Liberation Army"* (the CPA) by performing tasks specified in that paragraph. In the relevant part, the tasks assigned to UNMIS under its mandate are: "To monitor and verify the implementation of the Ceasefire Agreement and to investigate violations";** and "To observe and monitor movement of armed groups and redeployment of forces *in the areas of UNMIS deployment* in accordance with the Ceasefire Agreement" (emphasis added).***

* Available at http://unmis.unmissions.org/Portals/UNMIS/Documents/General/cpa-en.pdf.

** Security Council resolution 1590 (2005) of 24 March 2005, operative paragraph 4(a)(i).

*** *Ibid.*, operative paragraph 4(a)(iii).

4. As clearly appears from both resolution 1590 (2005)* and the CPA**, the ceasefire monitoring and verification mandate does not entail any enforcement action under Chapter VII of the Charter of the United Nations, but is based on the request made and consent already given by the Government of the Sudan (GOS) and the Sudan People's Liberation Movement/Sudan People's Liberation Army (SPLM/A), as parties to the CPA.

5. UNMIS is also authorized by the Security Council, under Chapter VII of the Charter of the United Nations, "to take the necessary action, in the area of deployment of its forces and as it deems within its capabilities, to protect United Nations personnel, facilities, installations, and equipment, ensure security and freedom of movement of United Nations personnel, humanitarian workers, joint assessment mechanism and assessment evaluation commission personnel, and, without prejudice to the responsibility of the Government of the Sudan, to protect civilians under imminent threat of physical violence".*** Also acting under Chapter VII of the Charter of the United Nations, the Council requested that the Secretary-General and the Government of the Sudan, "following appropriate consultation with the Sudan People's Liberation Movement, conclude a status-of-forces agreement within 30 days of adoption of the resolution . . . .**** The Agreement between the Government of the Sudan and the United Nations concerning the status of the United Nations Mission in the Sudan (the "SOFA") was concluded on 28 December 2005.

The Ceasefire Zone

6. Security Council resolution 1590 (2005), dated 24 March 2005, was adopted following the signing of the CPA, and the presentation to the Council of the report of the Secretary-General on the Sudan, dated 31 January 2005***** as well as the request of the Sudanese parties for the establishment of a United Nations peace support mission in the Sudan. Annexure I to the CPA, entitled "Permanent Ceasefire and Security Arrangements Implementation Modalities and Appendices", lays down the terms and arrangements for the ceasefire whose implementation is subject to monitoring and verification by UNMIS.

7. Annexure I defines the Ceasefire Zone as follows:

> "6.1 Southern Sudan, which shall be divided, for all the purposes of the ceasefire and monitoring activities, into three areas consisting of:
>
> Bahr el Ghazal;
>
> Equatorial Area
>
> Upper Nile Area
>
> 6.2 *Nuba Mountains Area*
>
> 6.3 Southern Blue Nile Area
>
> 6.4 Abyei Area

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* *Ibid.*, 21st preambular paragraph.

** See CPA, Annexure I: Permanent Ceasefire and Security Arrangements Implementation Modalities and Appendices, para. 15.1.

*** Security Council resolution 1590 (2005) of 24 March 2005, operative paragraph 16(i).

**** *Ibid.*, para. 16(ii).

***** Report of the Secretary-General on the Sudan, 31 January 2005 (S/2005/57).

6.5 Eastern Sudan Area (Hamashkoreb, New Rasai, Kotaneb, Tamarat, and Khor Khawaga)" (*emphasis added*)

8. On the other hand, the above-mentioned Secretary-General's report at paragraph 35, describes the *mission area* of UNMIS as consisting of six sectors, designated Sector I-VI, as follows:

> "Sector I: the Equatoria area, including the states of West Equatoria, Bahr Al Jabal and East Equatoria; the sector headquarters would be located in Juba
>
> Sector II: the Bahr el Ghazal area, including the states of West Bahr el Ghazal, North Bahr el Ghazal, Warab and Al Buhairat; the sector headquarters would be located in Wau
>
> Sector III: the Upper Nile area, including the states of Jonglei, Unity and Upper Nile; the sector headquarters would be located in Malakal
>
> Sector IV: the *Nuba Mountains area, which would have the same boundaries of former Southern Kordofan Province when Greater Kordofan was subdivided into two provinces*; the sector headquarters would be located in Kadugli
>
> Sector V: Southern Blue Nile, which is in Blue Nile State; the sector headquarters would be located in Damazin
>
> Sector VI: the *Abyei area*: the sector headquarters would be located in Abyei" * (*emphasis added*)

The UNMIS AOR in Southern Kordofan State

9. The concept of operations for UNMIS was developed in accordance with the CPA and the Report of the Secretary-General on the Sudan dated 31 January 2005.** That report describes the main features of the CPA, and notes that the parties to the CPA "agreed to an internationally monitored ceasefire" and that international monitoring and assistance would include the monitoring and verification of a large number of military personnel [. . .]". In relation to this monitoring and verification task, paragraph 13 of the report notes that the Agreement on Permanent Ceasefire and Security Arrangements Implementation Modalities (the "Ceasefire Agreement") details the monitoring and verification role to be played by the military elements of the foreseen United Nations peace support operation should the Security Council decide to authorize it.

10. The same paragraph then mentions that the Ceasefire Agreement calls for the active participation of the United Nations in the several bodies that will be created to assist in the implementation of the ceasefire, and that these bodies include "a Ceasefire Political Commission, a Ceasefire Joint Military Committee, Area Joint Military Committees and numerous joint military teams to be deployed *throughout the area of operations*" *** (*emphasis added*).

11. While paragraph 36 states that UNMIS would have an *area of responsibility* measuring 1,250 by 1000 kilometres, this does not shed any light on the specific question of the UNMIS AOR as raised in your note and in the UNMIS code cable.

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* *Ibid.*, paragraph 35.

** *Ibid.*

*** *Ibid.*, paragraph 13.

12. While the report of the Secretary-General variously uses the terms "mission area" (paragraph 35), "area of responsibility" (paragraph 36) and "area of operations" (paragraph 13), it is our understanding that the issue raised by UNMIS and which you have referred to us relates to the area of responsibility for the purpose of monitoring and verification of the implementation of the Ceasefire Agreement, and this note accordingly deals with that issue.

13. The description of Sector VI, as set forth in paragraph 35 of the above-mentioned Report of the Secretary-General, accords to the term "Nuba Mountain Area" the same meaning as Southern Kordofan State, by describing the area as having "the same boundaries of former Southern Kordofan Province when Greater Kordofan was subdivided into two provinces". It is important to note that one of the main documents constituting the CPA, "The Resolution of the Conflict in Southern Kordofan and Blue Nile States" (Chapter V of the CPA), specifically addresses the conflict in Southern Kordofan State. That document uses the term "Southern Kordofan/Nuba Mountain" mainly as a reference to a State.*

14. By defining Sector IV, Nuba Mountains area, as being co-terminus with "the former Southern Kordofan Province when Greater Kordofan was subdivided into two provinces", paragraph 35 of the Secretary-General's report suggests that "Southern Kordofan/Nuba Mountains" reflects two names either of which is a sufficient reference to one and the same area, rather than designating two contiguous areas whose mutual boundaries are not clearly defined.

15. However, even if Southern Kordofan/Nuba Mountains were two interchangeable names for the same state, it appears that "Nuba Mountains area" would not have been a valid reference to that state at the time the report was issued on 24 March 2005. By that date, the List of Corrections in the Protocols and Agreements, which is appended to the CPA, had been signed (on 31 December 2004), and it stated at paragraph 1.4 that the words "Southern Kordofan/Nuba Mountains" should be changed to "Southern Kordofan" in all the Protocols and Agreements. Nowhere does the CPA provide that the term "Nuba Mountains", when used alone and not combined with "Southern Kordofan", should be changed to "Southern Kordofan". It is therefore not clear to us why the report of the Secretary-General described Sector VI as the Nuba Mountain Area. This is a matter which UNMIS and DPKO are in a better position to shed light on, as they were more closely involved in the negotiations that led to the CPA.

16. In the early stages of the peace negotiations, the Sudanese parties used the term "Southern Kordofan/Nuba Mountains State" to refer to the area having "the same boundaries of former Southern Kordofan Province when Greater Kordofan was sub-divided into two provinces".** They decided, however, that the name of the State would be settled by a committee representing the State formed by the two Parties to the Peace Agreement.***

17. As indicated above, the List of Corrections in the Protocols and Agreements confirms the subsequently agreed name of the state as simply "Southern Kordofan State".

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* See the CPA, Chapter V: The Resolution of the Conflict in Southern Kordofan and Blue Nile States, paras. 2.1, 3-chapeau, 3.1, 8.6, 8.8, 9.3,10.1,11.2).

** *Ibid*., para. 2.1.

*** *Ibid*., para. 2.1, footnote 2.

18. Accordingly, the information available to us does not permit us to conclude that the Secretary-General's report, in designating Sector IV "Nuba Mountains" as extending to the entire area of Southern Kordofan State, accurately reflected the intention of the Sudanese parties in the Ceasefire Agreement. Our analysis of the matter is based on CPA and United Nations documents at our disposal, as well as information we received during an oral briefing we received from DPKO's Office of Operations (including in particular the desk officer and Office of the Military Adviser). We do not, however, have the benefit of information concerning any practice established during international mediation efforts or international ceasefire monitoring activities prior to the establishment of UNMIS which might be relevant to an understanding of the references Southern Kordofan/Nuba Mountains State, or Nuba Mountains Area, which might be relevant to understanding what those terms were understood to mean by the parties involved. Any additional information that DPKO might have in this regard could shed more light on the matter.

The extent of Sector VI—the Abyei Area

19. With regard to the AOR in Sector VI, Abyei Area, we note that the decision of the Permanent Court of Arbitration concerning the boundaries of the Abyei area have been accepted by both the GOS and the SPLM/A. According to that decision, an area around Higlig and Kharsane, previously considered to be part of Sector VI for UNMIS ceasefire monitoring and verification purposes, has been placed to the north of Abyei's northern boundary and thus within Southern Kordofan State. That area is thus no longer a part of Sector VI, which, according to the Secretary-General's report, paragraph 35, and Annexure I to the CPA, paragraph 6.4, only covers the "Abyei Area". The area is subject to the same doubt as to whether it is covered by Sector IV, to the extent Sector IV may be deemed to cover the whole of Kordofan State, or is outside the area covered by Sector IV, to the extent that that sector is deemed to cover only a portion but not the whole of Southern Kordofan State, as discussed above.

Freedom of movement of UNMIS

20. UNMIS also asks for advice regarding [its freedom of movement] considering that Security Council resolution 1690 (2005) and subsequent resolutions, as well as the UNMIS status-of- forces agreement (SOFA), provide that UNMIS shall have unrestricted movement throughout the territory of the Sudan.

21. With regard to the SOFA, we note that paragraph 12 thereof provides, in relevant part: "UNMIS, its members and contractors, together with their property, equipment, provisions, supplies, materials and other goods, including spare parts, as well as vehicles, vessels and aircraft [. . .] shall enjoy full and unrestricted freedom of movement without delay throughout the Sudan by the most direct route possible, without the need for travel permits or prior authorization or notification, except in the case of movement by air, which will comply with the customary procedural requirements for flight planning and operations within the airspace of the Sudan as promulgated and specifically notified to UNMIS by the Civil Aviation Authority of the Sudan". This provision reflects the relevant provisions of the Charter of the United Nations, whereunder the Organization shall enjoy in

the territory of each of its Members such privileges and immunities as are necessary for the fulfillment of its purposes.*

22. Paragraph 12 of the SOFA also contains the usual procedural stipulation that large movements of UNMIS personnel, stores, vehicles or aircraft through airports or on railways or roads used for general traffic within the Sudan shall be coordinated with the Government. This raises the question whether, regardless of the definition of geographical extent of Sector IV in paragraph 35 of the Secretary-General's report, or the definition of the Ceasefire Zone in paragraph 6.2 of Annexure I of the CPA, UNMIS is entitled to freedom of movement within the entire Southern Kordofan State [. . .].

23. Freedom of movement has consistently been recognized as a key component of the privileges and immunities necessary for a peacekeeping operation's mandate. This is reflected in various status-of-forces and similar agreements signed by the Organization with host countries and third States. To the extent that freedom of movement is essential to the fulfillment of the functions of UNMIS under its mandate to monitor and verify the implementation of the ceasefire between the GOS and the SPLM/A, the SOFA may be invoked by UNMIS in its discussions with the Sudanese authorities with a view to granting UNMIS access and freedom of movement in the whole of Southern Kordofan State.

24. Accordingly, although we are not in a position to conclude that the Ceasefire Zone under the CPA—and hence the UNMIS AOR—extends to the entire area of Southern Kordofan State, the Organization could argue that freedom of movement and access by UNMIS throughout the Southern Kordofan State is necessary for the fulfillment of its ceasefire monitoring and verification tasks under its mandate, and thus, that the whole of Southern Kordofan State should be deemed as falling within the AOR.

25. Such freedom of movement and access appears essential for monitoring and verification of the implementation by the parties of paragraphs 18.5 and 18.6 of the Ceasefire Agreement, which provide as follows:

> "18.5. The SPLA shall complete redeployment of its excess forces from Southern Blue Nile and Southern Kordofan/Nuba Mountains within six months of the deployment of the JIUs in those areas.
>
> 18.6. Without prejudice to the Agreement on the Security Arrangements and the right of Sudan Armed Forces (SAF) Command to deploy forces all over North Sudan as it deems fit, SAF troop levels in Southern Kordofan/Nuba Mountains and Blue Nile during the Interim Period shall be determined by the Presidency."

26. The above provisions mean that UNMIS must, as part of its mandate, monitor and verify the redeployment of SPLA forces from Southern Kordofan/Nuba Mountains, i.e., from the entire Southern Kordofan State, as well as to monitor troop levels in Southern Kordofan/Nuba Mountains, i.e., in the whole of Southern Kordofan State, and verify that they are in accordance with the determination of the Presidency, collectively [. . .]. UNMIS would not be able to accomplish this task if it were excluded from parts of Kordofan State.

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* Compare Article 105(1) of the Charter of the United Nations.

Conclusion

27. In conclusion, we would advise that UNMIS seek information regarding any practice that may have been established prior to its inception in 2005 that would support its view that its area of responsibility should cover the whole of Southern Kordofan State. We would also advise that UNMIS avail of the provisions in the SOFA concerning freedom of movement, as being essential for the fulfillment of its mandate.

15 April 2010

(*b*) Note to the Military Adviser for Peacekeeping Operations, Department of Peacekeeping Operations, concerning exceptional authorization for United Nations Military Experts on Missions to carry arms

Exceptional authorization for United Nations military experts on missions to carry arms—Applicable status-of-forces/mission agreement may determine authorization to carry arms—Jurisdiction over wrongful use of force—Liability of the United Nations for wrongful use of force—Directives on use of force—Requirement of firearms proficiency testing and training

1. This is with reference to your memorandum of [date] requesting the Office of Legal Affairs' (OLA) comments on paragraphs 16 and 38 of the Draft Manual for the Selection, Deployment, Rotation, Transfer and Repatriation of United Nations Military Experts on Missions in United Nations Peacekeeping Operations (the "Draft Manual"), which will replace the Department of Peacekeeping Operations (DPKO) "Guidelines for United Nations Military Observers" issued in 1995. Paragraphs 16 and 38 of the Draft Manual propose that, while United Nations Military Experts on Mission (UNMEM) are traditionally deployed unarmed, exceptions may be authorized by the United Nations Headquarters at the request of the Head of Mission through the Mission's Special Representative of the Secretary-General and based on a Security Risk Assessment. For the purposes of the Draft Manual, UNMEM include United Nations Military Observers, United Nations Military Liaison Officers and United Nations Military Advisers.

2. As DPKO is aware, while there have been exceptions in the past (in particular, the carriage of weapons by Military Advisers in the United Nations Assistance Mission in Iraq (UNAMI)), this would constitute a fundamental change from DPKO's long-standing policy and practice. OLA notes that, for security reasons, several missions, including UNAMI and the African Union/United Nations Hybrid Operation in Darfur (UNAMID), have requested that UNMEM assigned to them be authorized to carry arms. OLA trusts that DPKO and/or the Department of Safety and Security (DSS) have substantiated the view (a) that arming UNMEM would actually decrease their security risk and (b) that the military contingents are inadequate to protect them.

3. While OLA does not object to the proposal, in principle, it recommends that DPKO consider carefully the legal, political, security and practical implications before it proceeds with the proposed change in policy. For its part, OLA would require that the following issues be addressed.

(*a*) While neither the Convention on the Privileges and Immunities of the United Nations* (the "Convention") nor the model status-of-forces agreement ("SOFA") specifically preclude UNMEM from being armed, the provisions of a specific SOFA or status-of-mission agreement ("SOMA") may do so. For example, the agreement between the United Nations and the Republic of Iraq concerning the activities of UNAMI only allows members of UNAMI's guard units as well as United Nations security officers and United Nations close protection officers to possess and carry arms. To the extent that the Draft Manual under consideration is intended to apply to all peacekeeping operations, therefore, it would be necessary to review the applicable SOFA or SOMA, prior to authorizing particular UNMEM to carry arms, to assess whether they can be so armed without violating the terms of the SOFA or SOMA concerned.

(*b*) To the extent that the armed UNMEM would continue to be treated as experts on mission within the meaning of article VI of the Convention, they would potentially be subject to the civil and criminal jurisdiction of the host State if, for instance, they use force outside the scope of their authorization and the Secretary-General exercises his right and duty to waive their immunity. Unlike military personnel of national contingents, they would not be subject to the exclusive jurisdiction of their sending State. The authorization of UNMEM to carry weapons could, therefore, give rise to sensitivities amongst Member States concerning the status of UNMEM personnel. Moreover, from the United Nations perspective, the potential for civil or criminal cases against the United Nations, the individual missions and/or the individual UNMEM, arising out of any particular UNMEM's wrongful use of force, must be weighed deliberately and carefully before any new policy is pursued in this regard.

(*c*) The circumstances in which UNMEM would be authorized to use their weapons would need to be clearly set out in a Directive on the Use of Force, suitably tailored to the particular mission and taking account of the mandate and the specific assignments for which the UNMEM are deployed. Appropriate directives would also need to be issued detailing the type(s) of weapons authorized in the mission area and the applicable arrangements for the transportation, care and storage of the weapons and related ammunition.

(*d*) To the extent that UNMEM are typically serving members of the respective armed forces, it is assumed that they have formal national qualifications to carry and use firearms. This notwithstanding, OLA would advise that DPKO should ensure that appropriate arrangements for firearms proficiency testing and training are established both prior to, and during, the UNMEM's deployment.

4. Based on the foregoing, OLA would suggest that DPKO convene a meeting at the working level to assess the security reasons cited for the change in policy and to address the legal, political and practical implications thereof. Following the meeting, and should DPKO decide to proceed with the inclusion of exceptional procedures to authorize UNMEM to carry arms, as currently proposed in paragraphs 16 and 38 of the Draft Manual, OLA stands ready to assist in drafting or reviewing the necessary provisions in the Draft Manual.

8 June 2010

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

5. Personnel questions

(*a*) Note to the Under-Secretary-General for Management and the Under-Secretary-General for the Department of Field Support concerning the change in casualty reporting status in Haiti

CASUALTY REPORTING STATUS—LIFE INSURANCE CLAIMS—DETERMINATION OF THE OCCURENCE AND DATE OF DEATH IN THE ABSENCE OF A DEATH CERTIFICATE—DISCRETION OF THE SECRETARY-GENERAL TO DETERMINE THE DATE OF DEATH—DISCRETION OF THE SECRETARY-GENERAL TO AWARD, IN THE INTEREST OF THE ORGANIZATION, ALREADY PAID INTER VIVOS BENEFITS TO DECEASED STAFF MEMBERS ON AN *EX GRATIA* BASIS

INTRODUCTION AND SUMMARY OF CONCLUSIONS

1. This is with reference to the Department of Field Support's (DFS) request for advice concerning the criteria to be used by the Secretary-General in deciding whether to change the casualty reporting status arising from the earthquake in Haiti from "missing" to "presumed dead". Based on our discussions with representatives from DFS and the Office of Human Resource Management (OHRM), we understand that the underlying issue of concern is when, for United Nations administrative purposes, can the missing staff members be considered to have died and all ensuing administrative processes commenced.

2. For the reasons explained below, I consider that the Secretary-General may take a policy decision to designate a date from which the missing staff members may be considered to have died for United Nations administrative purposes. The Secretary-General also has the discretion to decide whether inter vivos United Nations benefits paid after a staff member's proven, or assumed, date of death should be off-set or recovered from the death benefits payable, or be considered as payments made on an *ex gratia* basis.

ANALYSIS

3. Normally, any doubt over the date of death of a United Nations staff member is resolved by reference to a Death Certificate issued by the appropriate national authorities. The date of death is set out in the Death Certificate and the cessation of United Nations inter vivos entitlements and the commencement of United Nations death benefits apply from that date. In the current circumstances, however, I understand that it is anticipated that the issuance of Death Certificates by the Haitian authorities may take some time, particularly in cases where no body is recovered. The question arises, therefore, as to whether the Organization may wish to designate a date of death for the purposes of United Nations benefits, prior to receipt of the applicable Death Certificate. In my view, the designation of such a date is within the discretion of the Secretary-General.

4. As we understand that OHRM and DFS are not aware of a similar situation within the Organization in the past, analogies may be drawn from the practices of others. One example identified from our discussions with the United Nations insurance brokers is that, following the events in New York on 9/11, the insurance industry paid claims in the absence of Death Certificates, and notwithstanding the usual wording in insurance policies that an individual must be missing for 365 days before death is assumed. On that

occasion, the insurance market honored claims in respect of individuals present at the affected locations who were missing for more than 30 days. In the absence of evidence to the contrary, the death was assumed to have occurred at the time of the catastrophic incident.[1] Such a position would not seem unreasonable for the Organization to follow.

5. Should such an approach be adopted, it would mean that, with effect from 30 days after the earthquake, staff members who are "missing" since the date of the earthquake shall, absent any evidence to the contrary, be considered for United Nations administrative purposes to have died on 12 January 2010. This approach may give rise to adjustments in the death benefits payable should the actual date of death be amended by a subsequent Death Certificate and/or where inter vivos benefits (e.g., salaries) have already been paid during the 30 day period. In some circumstances, this could lead to a negative balance with monies owing to the Organization.[2] In addition, based on our discussions with OHRM and DFS, we also understand that January 2010 salaries for some deceased staff members have already been paid in full, whereas, in other cases, they have not. Thus, similar adjustments may also arise in respect of deceased staff members whose bodies have been recovered.

6. Accordingly, in view of the potential for adjustments in respect of *all missing and deceased staff members*, a policy decision needs to be taken as to whether inter vivos benefits actually paid after a staff member's proven, or assumed, date of death should be off-set or recovered from the death benefits payable, or be considered as payments made on an *ex gratia* basis.

7. As regards the latter alternative, financial regulation 5.11 provides that "the Secretary-General may make such *ex gratia* payments as are deemed to be in the interest of the Organization, provided that a statement of such payments shall be submitted to the Board of Auditors with the accounts." Financial rule 105.12 further provides, in pertinent part, that "*ex gratia* payments may be made in cases where, 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." In the current instance, I note that the United Nations Staff Regulations and Rules do not require the Organization to pay inter vivos benefits in respect of any period after a staff member has died. *Thus, there is no clear legal liability on the part of the Organization to make such payments*. Accordingly, such payments may be made if it is determined that it is in the interests of the Organization to do so.

4 February 2010

(*b*) Interoffice memorandum to the Assistant Secretary-General for Human Resources Management concerning the Constitution of the Field Staff Union

Review by the Secretary-General of electoral regulations of staff unions—Electoral regulations of staff unions must extend the membership and the related right to run for office to all staff members, irrespective of whether

[1] In this connection, we understand that the United Nations Life Insurance provider [provider] has confirmed that it will process life insurance claims for deceased United Nations staff members prior to the issuance of an official Death Certificate based on notification of the death provided by the Organization.

[2] Monies due to the Organization may not be recovered from pension benefits.

THEY HAVE SERVED PREVIOUSLY IN A STAFF REPRESENTATIVE CAPACITY—TERM LIMITS FOR STAFF REPRESENTATIVES IN LINE WITH ADMINISTRATION'S RECOMMENDATION

1. I refer to your memorandum of [date] and its attachments, seeking the advice of the Office of Legal Affairs (OLA) on whether the Secretary-General would be in agreement with the electoral regulations as reflected in article 19 of the Constitution of the Field Staff Union (FSU).

2. On the basis of the information provided, we understand that the FSU's recently revised Constitution amended article 19 of the electoral regulations. Article 19 of the electoral regulations, as amended, now requires candidates for election to the office of the President, First Vice President and Second Vice President to have served in an FSU Unit Committee for at least two years. That article also prohibits candidates who have previously served as President or Vice President(s) for two terms from again running for office. You have requested our advice in connection with these two newly introduced requirements of article 19.

3. As you correctly point out in your memorandum, given the right of staff associations to promulgate their own statutes and rules and to freely elect their representatives, the role of the Secretary-General, when agreeing to electoral regulations, is to ensure that such regulations are consistent with the principle of equitable representation set out in staff regulation 8.1(b). Accordingly, it has been the consistent practice of the Administration to limit its review of statutes prepared by staff unions solely to their electoral provisions, which are approved by the Secretary-General when they are fully consistent with the requirements set out in staff regulation 8.1(b).

4. Staff regulation 8.1(b) stipulates, in relevant part, as follows:

> "They [staff representative bodies] shall be organized in such a way as to afford equitable representation to all staff members, by means of elections that shall take place at least biennially under electoral regulations drawn up by the respective staff representative body and agreed to by the Secretary-General."

Staff rule 8.1(c) provides as follows:

> "Each member of the staff may participate in elections to a staff representative body, and all staff serving at a duty station where a staff representative body exists shall be eligible for election to it, subject to any exceptions as may be provided in the statutes or electoral regulations drawn up by the staff representative body concerned and meeting the requirements of staff regulation 8.1 (b)."

5. Pursuant to staff regulation 8.1 (b), staff representative bodies must be organized in such a way as to afford equitable representation to "*all* staff members" (emphasis added). Staff rule 8.1(c) refers to "exceptions" concerning participation of staff in elections to such a body, which exceptions may be provided in the electoral regulations. However, this rule specifically stipulates that those exceptions are subject to "meeting the requirements of staff regulation 8.1(b)", the principal requirement of which is "to afford equitable representation to all staff members".

6. Accordingly, the requirement in article 19 that candidates must have served for a minimum of two years in an FSU Unit Committee before they can run for office would, in our view, undermine and not be consistent with the all-inclusive nature of staff regulation 8.1 (b). The FSU electoral regulations must extend membership and the related right to

run for office to all staff members, irrespective of whether they have served previously in a staff representative capacity.

7. As for the provision in article 19 prohibiting candidates who have previously served as President or Vice President(s) for two terms from again running for office, we would note that this is in line with the Administration's own recommendation to impose term limits for staff representatives. The Administration's recommendation was reflected in the Secretary-General's report entitled "Reasonable time for staff representational activities" of 10 May 1996 (A/C.5/50/64). Following its consideration of this report, the General Assembly decided, in resolution 51/226 of 3 April 1997 on "Human resources management", to limit the period of continuous release of staff representatives to a maximum of four years. In light of the General Assembly's decision, there would be no legal basis to object to the imposition of term limits in respect of those candidates whose election would mean that they would have to be released from their regular functions.

14 October 2010

6. Miscellaneous

(*a*) Interoffice memorandum to the Special Adviser on Gender Issues and Advancement of Women, Office of the Special Adviser on Gender Issues, Department of Economic and Social Affairs, concerning the registration of "Taiwanese" representatives of non-governmental organizations (NGOs) at the fifty-fourth session of the Commission on the Status of Women (1–12 March 2010)

The United Nations considers "Taiwan" for all purposes to be an integral part of the People's Republic of China—The United Nations cannot accept official documentation issued by the "authorities" in "Taiwan", as they are not considered a Government

1. I wish to refer to your memorandum dated [date] to the Legal Counsel attaching a letter [date] from the Permanent Representatives of the [five States] to the Secretary-General drawing his attention to the fact that in March 2009, NGO representatives from "Taiwan" carrying "Republic of China (Taiwan)" passports, were denied United Nations passes to attend the fifty-third session of the Commission on the Status of Women ("CSW"). The Permanent Representatives seek the Secretary-General's confirmation that NGO representatives carrying passports from "Taiwan" will be granted access to the upcoming CSW session in March 2010. In light of this letter you seek our advice as to whether the Department of Safety and Security (DSS) should continue to deny access to NGO representatives carrying official identification issued by the "authorities" in "Taiwan".

2. The status of "Chinese Taipei/Taiwan" in the United Nations is regulated by General Assembly resolution 2758 (XXVI) of 25 October 1971, entitled "Restoration of the lawful rights of the People's Republic of China in the United Nations". By that resolution, the General Assembly decided "to recognize the representatives of [the People's Republic of China] as the only legitimate representatives of China to the United Nations, and to expel forthwith the representatives of Chiang Kai-Shek. [. . .]"

3. Since the adoption of this resolution and in accordance with the decision which it contains, the United Nations has considered "Taiwan" for all purposes to be an integral part of the People's Republic of China, without any separate status. Thus, the "authorities" in "Taipei" are not considered to be a government, enjoy any form of governmental status or to exercise any governmental powers.

4. The Secretariat strictly abides by this decision which in effect means that it cannot accept any form of official documentation issued by the "authorities" in "Taiwan/Taipei".

5. Consequently, the Secretariat cannot accept "Taiwanese" passports as a means of identification for purposes of issuing United Nations passes to delegates for the upcoming session of the CSW.

24 February 2010

(*b*) Note to the Chief of Staff, Senior Management Group, concerning an invitation for the film [Title]

Use of name, quotes and image of the Secretary-General in a documentary and its promotion material—New York State Law concerning unauthorized commercial use of name and likeness of public figures—Public figure exception—Use of United Nations name and emblem reserved for official purposes of the Organization—Use of proper titles of individuals—Use of images of United Nations buildings displaying the United Nations emblem—Outside activity of staff members

1. I refer to your Note of [date], seeking the Office of Legal Affairs' (OLA) comments on an invitation to the premier of the documentary, [Title], concerning the work of the sixty-second session of the General Assembly. The film is directed and produced by [the director] who, you have indicated, is a staff member of the Department of Safety and Security (DSS). You have provided two versions of the invitation, one with the Secretary-General's name in the top right corner and the other with his name as well as a quote by him. We understand that [the director] has submitted a formal request to the Executive Office of the Secretary-General (EOSG) to use the version containing the quote by the Secretary-General.

2. You have requested OLA's comments, in particular with respect to the use of the image of the Secretary-General, the United Nations emblem and the General Assembly Hall on the invitation, and in the credits to the film. A form of the invitation is also posted on the official website for the documentary, [Internet address]. It is also used on the poster for the documentary and the DVD cover. You have indicated that the Secretary-General is apparently shown in the film, and is listed as a cast member in the credits. It is not clear whether permission to use such footage was obtained by [the director].

Use of the Secretary-General's name, quotes and image

3. You have informed us that neither the Secretary-General nor the Organization has been involved in the making of this film. Therefore, the use of the Secretary-General's name, quotes and his image/photograph on the poster for the film is inappropriate. Moreover, such use creates the impression that the Secretary-General is involved in the making of the film, or that he is endorsing the film. Accordingly, it is clear that the Secretary-General

can require the filmmakers to remove his name, image and attributed quotations from the poster and any other advertising and promotions for the film and prevent anything that would suggest his endorsement of or involvement in the making of the film.

4. With respect to the use of the Secretary-General's name and likeness in the film itself, it should be noted that state laws in the United States, including the laws of New York State,* protect against the unauthorized commercial use of the name and likeness of public figures. Although the film is said to be a documentary, the ".com" address of the website for the film suggests that it is being promoted as a commercial film. Therefore, sections 50 and 51 of the New York State Civil Rights Law (NYCRL) might be applicable, and a cause of action could exist for invasion of the privacy of the Secretary-General. Such a cause of action might also apply to any unauthorized use of the footage of the Secretary-General contained in the film. However, the producer of the film could claim that the use of the Secretary-General's name and likeness falls under the incidental "public figure" exception under sections 50 and 51 of the NYCRL, since the film is a documentary about arguably newsworthy events, settings and persons, including the Secretary-General. In light of the foregoing, [the director] should be requested to remove the image/photograph and quote of the Secretary-General from the poster for the film. Although it might not be feasible at this stage and although [the director] may be able to claim a use right under the incidental "public figure" exception, you may also wish to request [the director] to remove footage for which the use has not been authorized by the Secretary-General.

Use of the United Nations name and emblem

5. The poster for the film uses the United Nations name in referring to: (i) the President of the sixty-second session of the United Nations General Assembly, and (ii) several "United Nations Ambassadors". With respect to (i), above, since this is a factual statement and the former title of Ambassador [Name], the use would not be objectionable. With respect to (ii), above, it appears that the term "United Nations Ambassadors" refers to the current or former Permanent Representatives to the United Nations who would appear in the film. As the term "United Nations Ambassadors" is incorrect and misleading, the proper titles for these individuals should be used, if at all.

6. The poster for the film contains four United Nations emblems which are portrayed in wrong colour and format. Below each such emblem, the following references are indicated: (i) United Nations Media Accreditation & Liaison Unit, (ii) United Nations Photo Library, (iii) United Nations Archives, and (iv) UNifeed.

7. As you are aware, the use of the United Nations emblem and name is reserved for the official purposes of the Organization under General Assembly resolution 92(I) of 7 December 1946. Since this film is not a United Nations film, the use of the United Nations emblem in any promotion of the film, including on the poster, should not be authorized. Furthermore, any such use of the United Nations emblem would create the impression that the United Nations is involved in the production of the film, or the film is endorsed by the United Nations. In light of the above, [the director] should be requested to take necessary action to ensure that the United Nations emblem is removed from the poster and from any other document relating to the promotion of the film, including the DVD cover.

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* New York Civil Rights Law, sections 50 and 51.

8. In addition, it is not clear whether the four United Nations units referenced in the poster have been involved in the production of the film or have authorized the filmmakers to use archival footage, documents or photographs, all of which constitute United Nations property. Accordingly, we recommend that the Department of Management and the Department of Public Information verify their involvement, if any, in the production the film, including the provision and authorization for the use of any footage, documents or photographs to be included in the film.

9. With respect to the picture of the General Assembly Hall displayed on the poster which also includes the United Nations emblem, while prior authorization is required for its display, in practice, it is difficult to control such usage, since the picture of the General Assembly Hall is readily available on the internet for downloading. In addition, if the film contains any footage of the United Nations that has been obtained through proper authorization, and if such footage displays the United Nations emblem, there can be no objection to the display of the emblem in such context.

Outside activities

10. You have indicated that [the director], the director and producer of the film, is a staff member of DSS. Consequently, the production of the film would constitute an outside activity engaged by the staff member. Outside activities of staff members are governed by staff regulation 1.2 (o) and staff rules 1.2 (r) and (s). In particular, staff rule 1.2 (s) provides as follows:

> "Staff members shall not, except in the normal course of official duties or with the prior approval of the Secretary-General, engage in any outside activities that relate to the purpose, activities or interests of the United Nations. Outside activities include but are not limited to:
>
> (i) Issuing statements to the press, radio or other agencies of public information;
>
> (ii) Accepting speaking engagements;
>
> (iii) Taking part in film, theatre, radio or television productions;
>
> (iv) Submitting articles, books or other material for publication, or for any electronic dissemination."

The foregoing staff regulations and rules are further elaborated in Administrative Instruction ST/AI/2000/13 on "Outside activities". Under the Staff Regulations and Rules and ST/AI/2000/13, outside activities require the prior approval of the Secretary-General. Such approval is usually sought by way of a request from the staff member to the Office of Human Resources Management, through the staff member's Department or Office. Failure to obtain prior approval for an outside activity could constitute misconduct, which could lead to the imposition of disciplinary measures against the staff member concerned. It is not clear whether [the director] has obtained prior approval for such outside activities. You may wish to inquire with [the Assistant Secretary-General for Human Resources Management].

13 October 2010

B. Legal opinions of the secretariats of intergovernmental organizations related to the United Nations

1. International Labour Organization*

Legal Opinions rendered during the International Labour Conference, 99th Session (June 2010)

(*a*) Opinion concerning the attendance of NGOs in Conference committees

In response to a question from the Government Representative of Cuba, the Legal Adviser said that the rules governing the participation in meetings of international non-governmental organizations were set out in article 12(3) of the Constitution of the International Labour Organization, 1946,** and in a number of decisions of the ILO Governing Body (contained in Annex V of the Compendium of rules applicable to the Governing Body). The list of those organizations authorized to attend was established by the Governing Body. International non-governmental organizations of employers and workers did not have the same rights as tripartite members.***

(*b*) Opinion concerning the promotion and the implementation of the Recommendation on HIV and AIDS and the world of work, 2010

During a discussion of the Committee on HIV/AIDS and the World of Work concerning the Discrimination (Employment and Occupation) Convention, 1958 (No. 111),**** a question was raised as to what would be the most strategic means of extending the scope of Convention No. 111 to cover HIV.

A representative of the Legal Adviser explained that there were three options for consideration by the Committee. One would be to review or revise Convention No. 111. He advised against that option since Convention No. 111 was one of the most ratified Conventions and any revision would require member States to ratify the new, revised instrument. Another option would be to pursue the development of a Protocol. However, a Protocol also required ratification and countries that had ratified Convention No. 111, to which the Protocol would be formally attached, would not necessarily ratify a Protocol. The third option would be to strongly encourage member States to make a declaration under article

* A number of Legal Opinions were rendered during the Conference. Two Legal Opinions have been selected for reproduction here. The others can be found in the records of the Conference. See *Provisional Records of the 99th Session of the International Labour Conference* (http://www.ilo.org/ilc/ILCSessions/99thSession/pr/lang—en/index.htm).

** United Nations, *Treaty Series,* vol. 15, p. 40.

*** *Provisional Record No. 3 of the 99th Session of the International Labour Conference*, p. 11, available at http://www.ilo.org/wcmsp5/groups/public/—ed_norm/—relconf/documents/meetingdocument/wcms_141325.pdf.

**** Convention (No. 111) concerning Discrimination in respect of Employment and Occupation, 1958. United Nations, Treaty Series, vol. 362, p. 31.

1(1)(b) of Convention No. 111 to include HIV-related discrimination among the discriminations they undertake to eliminate.*

2. International Fund for Agricultural Development

(*a*) Interoffice memorandum to the Audit Committee concerning legal issues to be considered when developing a Code of Conduct for the Members of the Executive Board of the International Fund for Agricultural Development (IFAD or the Fund)

Codes of Conduct in other specialized agencies of the United Nations—Legal situation in IFAD—Members of the Executive Board are States, not individuals—Representatives are not officials of IFAD and their conduct is not within the organic jurisdiction of any of IFAD's bodies—Discussion of a compatible approach of other multilateral financial institutions within IFAD's legal framework

Introduction

1. For the purpose of the deliberations of the Audit Committee, this memorandum surveys the legal issues—derived from the basic texts of the Fund as well as from the relevant rules of international law—to be considered when contemplating the development of a code of conduct for the Members of the Fund's Executive Board. It analyses these issues and articulates some suggestions on how they could possibly be handled.

2. It has now become common for multilateral financial institutions to adopt codes of conduct for the members of their executive boards. Such codes of conduct invariably are to provide Executive Directors with guidance on ethical standards in connection with their roles and responsibilities in the micro finance institutions. These codes, which apply to the members of Executive Boards, their alternates, and advisors to Executive Directors, typically mandate regular financial disclosure reports, and underline the importance of the observance of the highest standards of ethical conduct.

3. At its 97th session (15–16 September 2009) the Executive Board, while noting [State's] opposition to this idea,[1] agreed that the Audit Committee should proceed with the development of a code of conduct for IFAD's Executive Board members.

4. The multilateral financial institutions that have hitherto adopted codes of conduct for the members of their respective executive boards differ from IFAD in terms of the composition of these bodies, which impacts significantly on the development of a code of conduct for the members of the Executive Board. For the present purposes, it suffices to refer to the multilateral financial institutions, which like IFAD are also specialized agen-

* *Provisional Record No. 13 of the 99th Session of the International Labour Conference*, p. 82, available at http://www.ilo.org/wcmsp5/groups/public/—ed_norm/—relconf/documents/meetingdocument/wcms_141773.pdf.

[1] Decisions and deliberations of the ninety-seventh session of the Executive Board (EB 2009/97/INF.7) para. 41. Available from http://intradev:8015/gbdocs/eb/97/e/EB-2009–97-INF-7.pdf.

cies of the United Nations,[2] i.e., the International Monetary Fund (IMF),[3] the International Bank for Reconstruction and Development—World Bank (IBRD),[4] the International Development Association (IDA),[5] and the International Finance Corporation (IFC).[6] The selection of these institutions as comparators for the purpose of the present memorandum relates to the fact that, unlike the regional international financial institutions, the rules and principles reflected in the 1975 Vienna Convention on the Representation of States in their Relations with International Organizations of a Universal Character* are of relevance when dealing with the issue of codes of conduct in the specialized agencies. Moreover, as specialized agencies of the United Nations, the Convention on the Privileges and Immunities of the Specialized Agencies** contains relevant rules and principles that apply equally to the IMF, the World Bank, the IDA, the IFC and IFAD, but not to the regional international financial institutions.

The legal situation in the other multilateral financial institutions

(a) The Board members are individuals, not States

5. In three of these organizations the individual composition of their executive organs is first expressed in their denomination, which is referred to simply as "Executive Directors" in the case of the IBRD and "Board of Directors" in IFC. Only in the case of the IMF is the term "Executive Board" used to refer to the executive organ. Still article XII, section 3(b) of the IMF Articles of Agreement*** introduces the office of Executive Directors by stipulating that the Executive Board shall consist of five Executive Directors appointed by the five members having the largest quotas and fifteen shall be elected by the other

[2] Specialized agencies may or may not have been originally created by the United Nations, but they are incorporated into the United Nations System by the United Nations Economic and Social Council acting under Articles 57 and 63 of the Charter of the United Nations.

[3] IMF became a specialized agency of the United Nations on 15 November 1947. Protocol concerning the entry into force of the Agreement between the United Nations and the International Monetary Fund (United Nations, *Treaty Series*, vol. 16).

[4] The World Bank became a specialized agency of the United Nations on 15 November 1947. Protocol concerning the entry into force of the Agreement between the United Nations and the IBRD (United Nations, *Treaty Series*, vol. 16, p. 341).

[5] IDA became a United Nations specialized agency on 27 March 1961. Agreement between the United Nations and the IDA (United Nations, *Treaty Series*, vol. 224, p. 582).

[6] IFC became a specialized agency of the United Nations on 12 February 1957. Agreement between the United Nations and the IBRD (acting for and on behalf of the IFC) on relationship between the United Nations and the IFC (United Nations, *Treaty Series,* vol. 265, p. 312).

[*] A/CONF.67/16 (not yet in force).

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

[***] United Nations, *Treaty Series*, vol. 2, p. 39.

members, with the Managing Director as chairman.[7] One clear indication that the term "Executive Directors" found in the constituent instruments of the other multilateral financial institutions refers to individuals, not States, can be found in the provision concerning succession and vacancies. The charters of those institutions provide that the Executive Directors shall continue in office until their successors are appointed or elected. If the office of an elected Executive Director becomes vacant more than ninety days before the end of his term, another Executive Director shall be elected for the remainder of the term by the members that elected the former Executive Director. While the office remains vacant, the Alternate of the former Executive Director shall exercise his powers, except that of appointing an Alternate.[8] Obviously, there would be no need for any such transitional measures if the members of the Executive Board were States rather than individuals. Another indicator can be found in the provision that states that Executive Directors and their Alternates shall be entitled to remuneration in the form of salary and supplemental allowances at such annual rates as shall be determined from time to time by the Board of Governors.[9] Moreover, there are provisions that specifically speak of "individuals" when referring to the Executive Directors of those institutions.[10]

6. Thus in these multilateral financial institutions the membership of the executive organ is for individuals who are formally called "Executive Directors", not countries.[11]

(b) Executive Directors are officials of the organization

7. The Executive Boards of the Bretton Woods institutions were designed in such a way that Executive Directors' exclusive loyalty would be to the institution rather than to

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[7] Similarly, according to section 4(b) of article V of the Articles of Agreement of the World Bank, there shall be twelve Executive Directors of whom five shall be appointed, one by each of the five members having the largest number of shares, and seven shall be elected according to schedule B by all the Governors other than those appointed by the aforementioned members. It is stated in IDA's charter that the Board shall be composed *ex officio* of each Executive Director of the World Bank who shall have been (i) appointed by a member of the Bank which is also a member of IDA, or (ii) elected in an election in which the votes of at least one member of the Bank which is also a member of IDA shall have counted toward his election. The Alternate to each such Executive Director of the World Bank shall *ex officio* be an Alternate Director of IDA. Finally, by virtue of article IV, section 4(b) of the IFC Articles of Agreement, the Board of Directors of the IFC shall be composed *ex officio* of each Executive Director of the Bank who shall have been either appointed by a member of the Bank which is also a member of the IFC, or elected in an election in which the votes of at least one member of the Bank which is also a member of the IFC shall have counted toward his election. The Alternate to each such Executive Director of the Bank shall *ex officio* be an Alternate Director of the IFC. Any Director shall cease to hold office if the member by which he was appointed, or if all the members whose votes counted toward his election, shall cease to be members of the IFC.

[8] See, for example, article XII, section 3(f) of the IMF Articles of Agreement; and article V, section 4(d) of the IBRD Articles of Agreement (United Nations, *Treaty Series,* vol. 2).

[9] See, for example, section 14 (e).i. of the By-Laws of the IMF. Available at http://www.imf.org/external/pubs/ft/bl/blcon.htm.

[10] *Ibid*., section 14 (h) and (i).

[11] See, for comparison, Ibrahim F.I. Shihata, "Status of the Bank Directors—Memorandum by the General Counsel dated May 27, 1994", in *The World Bank Legal Papers* (The Hague, Boston, London; Martinus Nijhoff Publishers; 2000), p. 653. Written in response to a request by an Executive Director and circulated to all Executive Directors.

their own capitals. Some countries, however, have not consistently abided by this model. This has created some problems. Some directors, moreover, have expressed a sense of having been treated more like ambassadors sent by their capitals than representatives of their constituency members and the institution.[12] Notwithstanding this practice, the fact remains that technically the Executive Directors are international officials. The World Bank General Counsel has explained this situation by pointing out that the status of the Executive Director as an official of the institution does not mean that she/he is detached from her/his government authorities.[13] However, the international status is underscored by the fact that all Executive Directors of the aforementioned institutions, whether elected or appointed, are remunerated by those organisations.[14] Under the by-laws of the respective institutions, Executive Directors and Alternates are required to devote all the time and attention to the business of the Bank that its interests require, and between them to be continuously available at the principal office of the concerned institutions. In 1987 the General Counsel succinctly stated the status of the Executive Directors:

> "An Executive Director, as an official of the Bank who is appointed or elected by a member or members of the Bank, and whose votes depends on voting strength of the member or member who appointed or elected him, owes his duty both to the \bank and his "constituency" and vote on its instructions, but he may not split the votes. However, he is not to act simply as an ambassador of the government or governments which appointed or elected him, and is expected to exercise individual judgment in the interest of the Bank and its members as a whole."[15]

8. The implication of the fact that these Executive Directors are international officials, is to a certain extent illustrated by opinion of the Office of the General Counsel of the United States Department of the Treasury on the question whether the United States Federal Vacancies Reform Act ("Vacancies Reform Act" or "Act"), 5 U.S.C. §§ 3341–3349d (Supp. IV 1998), applies to vacancies in the offices of the United States Executive Director and the Alternate United States Executive Director at the IMF. The opinion concludes that the United States Executive Director and the Alternate United States Director at the IMF and the World Bank are not part of an Executive agency, and therefore vacancies in those offices are not covered by the Federal Vacancies Reform Act.[16]

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[12] See, for example, Eric Santor, "Does the Fund Follow Corporate Best Practice?", in Banque du Canada Working Paper 2006–32 / Document de travail 2006–32, Governance and the IMF. Available from www.bankofcanada.ca/en/res/wp/2006/wp06–32.pdf, pp. 8–9.

[13] "Status of the Bank Directors—Memorandum by the General Counsel dated May 27, 1994" (see pp. 655–656).

[14] See, for comparison, *ibid.,* p. 653–655 and F. Gianviti, "Decision Making in the International Monetary Fund", in *Current Developments in Monetary and Financial Law*, vol. 1, (Washington, D.C., International Monetary Fund, 1999), pp. 31–67, p. 46.

[15] Shihata, Ibrahim F.I., "Prohibition of political activities in the Bank's work, Legal opinion of the General Counsel", in *The World Bank Legal Papers* (The Hague, Boston, London; Martinus Nijhoff Publishers; 2000), p. 244.

[16] United States, Acting Deputy Assistant Attorney General, "Applicability of the Federal Vacancies Reform Act to the Vacancies at the International Monetary Fund and the World Bank", memorandum for the General Counsel of the Department of the Treasury. Available from http://www.usdoj.gov/olc/imfrevised.htm.

9. The conclusion that these Executive Directors are international officials has far reaching legal consequences, the most important being that they are fully subject to the organic jurisdiction of the organization concerned. In other words, their legal status is not regulated by the rules and principles reflected in the 1975 Vienna Convention on the Representation of States in their Relations with International Organizations of a Universal Character, but by the rules of the organizations and those set out in the Convention on the Privileges and Immunities of the Specialized Agencies, which came into force on 2 December 1948.

(c) The power to regulate the conduct of the Executive Directors

10. As officials of these organizations, their conduct may be regulated by the organization and sanctions administered by such organization in case of non-compliance. It is by virtue of this organic jurisdiction over the Executive Directors that the IMF, IFC and World Bank had the power to promulgate the codes of conduct for the members of their executive organs.

The Legal situation in IFAD

(a) Members of the Executive Board are States, not individuals

11. Contrary to the situation in the IMF, World Bank IDA and the IFC, in IFAD the Executive Board is composed of members "elected from Members from the Fund".[17] Accordingly, when the Governing Council elects members of the Executive Board through the process set forth in schedule II of the Agreement Establishing IFAD[*] (the Agreement), it does not elect any particular individual, but States.[18] The Executive Board acknowledged this particularity at its first session on 14 December 1977, the Executive Board confirmed this when it noted that membership in the Executive Board consisted of the Member States of IFAD.[19] It is to be noted that, unlike the case of the aforementioned organizations, none of the IFAD's basic documents employs the term "Executive Director" to refer to the members of the Executive Board, despite the fact that some used that term colloquially in IFAD. The official denomination used by the Agreement, the By-Laws and most notably rule 7 of the Rules of Procedures of the Executive Board is: "Representative of a Member or Alternate".[20]

(b) Representatives of Members and Alternates are not officials of IFAD

12. The foregoing implies that the representatives of Members and Alternates are not officials of IFAD. This is underscored in section 5 (e) of article 6 of the Agreement and section 5 of the IFAD By-Laws, which state that—unlike the case in the other multilateral financial institutions—the representatives of Members and Alternates of the Executive Board shall serve without remuneration from the Fund. The Governing Council decided

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[17] Section 5(a) of article 6 of the Agreement Establishing IFAD.

[*] United Nations, *Treaty Series*, vol. 1059, p. 191.

[18] See schedule II 3(a)-(c) of the Agreement.

[19] Minutes of the First Session of the Executive Board of IFAD of 6 February 1978 (EB/1), para. 9. Available from http://intradev.ifad.org/ifbibl/.

[20] See article 6, section 5 (e), of the Agreement and section 4 of the By-Laws for the Conduct of the Business of IFAD. Available from http://www.ifad.org/pub/basic/bylaws/e/!04by-la.pdf.

that they shall only be entitled to receive actual expenses incurred for travel by the most direct route to and from the place of the meeting, unless such right is waived by the Member concerned.

(c) Lack of power to regulate the conduct of representatives of Member States

13. As representatives of Members and Alternates, rather than officials of IFAD, the rules and principles reflected in the 1975 Vienna Convention on the Representation of States in their Relations with International Organizations of a Universal Character apply to the members of the Executive Board. This means that the conduct of those representatives is not within the organic jurisdiction of any of IFAD's bodies, be it the Governing Council, the Executive Board or the President. This lack of organic jurisdiction means also a lack of enforcement power.

A possible approach within IFAD's legal framework

14. The fact that Members of the Executive Board are Member States, not individuals, and that Representatives of Members and their Alternates are not officials of IFAD, does not mean that the objectives pursued by the codes of conduct in other multilateral financial institutions can not be achieved within IFAD's legal framework. In the following paragraphs an approach that is compatible with that framework will be developed for consideration by the Audit Committee.

(a) Legal basis and competent authority

15. The representatives of Members in the Executive Board of the Fund are entrusted by the Member States that have selected them with responsibilities for ensuring that the Fund carries out the mandate prescribed in the Agreement. Therefore, Member States bear the responsibility to ensure that their representatives satisfy the required personal and professional conduct that meets the highest standards. Thus, notwithstanding the fact that IFAD's organic jurisdiction does not extend over the Member States' representatives, the Governing Council has assumed the power to prescribe that each Member and Alternate Member of the Executive Board shall appoint a person competent in the fields of the Fund's activities to represent it on the Board and that each such representative shall serve on the Board at least for one term of the Member or the Alternate Member concerned, unless such Member decides otherwise.[21] This decision expresses the Governing Council's understanding that, notwithstanding the principle of Member States' freedom of appointment, the organization has an interest in requiring Member States to designate representatives who have the necessary technical and personal competencies to serve in the Executive Board. The phrase "a person competent in the fields of the Fund's activities" is employed in section 4 of IFAD's By-Laws. It points to several fundamental elements that are necessary but not sufficient for proper discharge of the responsibilities of the Executive Board, i.e., technical competence, ethical understanding, and communication skills, excellence, humanism, accountability, and altruism. If freedom of appointment of Member States were to entail that they could ignore these elements when designating their representatives in the Executive Board, achievement of the organization's objective and the proper administration of business could not be guaranteed.

[21] Section 4, By-Laws for the Conduct of the Business of IFAD.

Hence, [it is in] the interest of the Fund to require its Member States to designate persons with the necessary competence in the fields of its activities.

16. Admittedly, section 4 of the By-Laws is currently couched in rather broad language, but nothing prevents the Executive Board to propose to the Governing Council to spell out in more details the ethical dimensions of the competencies Member States are expected to ensure when designating their representatives in the Executive Board. The By-Laws were adopted by the Governing Council pursuant to article 6, section 2(f) of the Agreement, which states that the Governing Council may, by a two-thirds majority of the total number of votes, adopt such regulations and by-laws not inconsistent with the Agreement, as may be appropriate for the conduct of the business of the Fund. When delegating its powers to the Executive Board under article 6, section 2(c) of the Agreement, the Governing Council expressly reserved this power. Accordingly, any amplification of section 4 of the By-Laws has to be adopted by the Governing Council. There are nevertheless two aspects of a code of conduct that could only be regulated by the Executive Board. The first aspect concerns the issue of post-service employment within IFAD. It would be the responsibility of the Executive Board to act under article 6, section 8(d) of the Agreement in order to amend the Human Resources Policy in order to stipulate the necessary regulation. Similarly, an Ethics Committee could be established by the Board pursuant to rule 11 of its Rules of Procedures.

(b) Contents of a code of conduct

i. Application

17. Because of the international status of the Executive Directors in the other multilateral institutions, the codes of conduct adopted in these organizations apply to Executive Directors, Alternates and Advisors unless otherwise indicated.[22] With respect to assistants to Executive Directors, the provisions of the Staff Code of Conduct normally apply to assistants in their own offices, and should take such measures as are necessary and appropriate.[23] For reasons derived from the fact that representatives of Members

[22] Code of Conduct for Board Officials of the IBRD, IFC, IDA and the Multilateral Investment Guarantee Agency (MIGA) (together the World Bank Group), para. 1(b). Available from http://siteresources.worldbank.org/BODINT/Resources/CodeofConductforBoardOfficialsDisclosure.pdf; Code of Conduct for the Members of the Executive Board of the IMF, para. 2. Available from http://www.imf.org/external/hrd/edscode.htm; Code of Conduct for officials of the Board of Directors of the European Bank for Reconstruction and Development (EBRD), rule 2. Available from http://www.ebrd.com/about/strategy/general/code1.pdf; Code of Conduct for Executive Directors of the African Development Bank (AfDB) and the African Development Fund (AfDF), article 2. Available from: http://www.afdb.org/fileadmin/uploads/afdb/Documents/Generic-Documents/30716687-EN-CODE-OF-CONDUCT-EDS-ENGLISH.PDF; Code of Conduct for the Board of Directors of the Asian Development Bank (ADB), para. 2. Available from http://www.adb.org/bod/Code-of-Conduct.pdf.

[23] Code of Professional Ethics for the World Bank Group and the International Centre for Settlement of Investment Disputes (ICSID) is under construction. Available from http://web.worldbank.org/WBSITE/EXTERNAL/EXTABOUTUS/ORGANIZATION/ORGUNITS/EXTETHICS/0,,contentMDK:21945064~menuPK:780507~pagePK:64168445~piPK:64168309~theSitePK:593304,00.html; Code of Conduct for EBRD Personnel and Experts, para. 2, available from http://www.ebrd.com/about/strategy/general/code2.pdf; Code of Conduct for Staff of the IMF, para. 1, available from: http://www.imf.org/external/hrd/code.htm; Code of Conduct for Staff members of the AfDB Group, para. 1.2, available from http://www.afdb.org/en/about-us/structure/auditor-generals-office-oagl/integrity-and-anti-corruption/code-of-conduct/.

and Alternates, as well as their assistants are not officials of IFAD, the foregoing cannot be replicated in IFAD. The scope of IFAD's code will have to be restricted to the persons designated as representatives of Members and Alternates.

ii. Basic standard of conduct

18. Typically, the codes of conduct of the other multilateral financial institutions stipulate that the Executive Directors should observe the highest standards of ethical conduct and that in the performance of their duties, they are expected to carry out the mandate of the institution to the best of their ability and judgment, and to maintain the highest standards of integrity. In the case of IFAD, this will have to be articulated differently. A possible articulation could be:

> "Member States shall require that their representatives should observe the highest standards of ethical conduct and that in the performance of their duties, they are expected to carry out the mandate of the institution to the best of their ability and judgment, and to maintain the highest standards of integrity."

iii. Conduct within the IFAD

19. The codes adopted by the other multilateral financial institutions contain provisions stating that the Executive Directors should treat their colleagues and the staff with courtesy and respect, without harassment, physical or verbal abuse. Moreover, they provide that the Executive Directors should exercise adequate control and supervision over matters for which they are individually responsible, and they should ensure that property and services of the institution are used by themselves and persons in their offices for official business only.[24] Clearly, as the prescriptions presume that the Executive Directors are officials of the institution and are resident, they are not relevant to IFAD.

iv. Protection of confidential information

20. Codes of conduct adopted in the other multilateral financial institutions also provide that in line with the rules and guidelines of the organization concerned, Executive Directors have the responsibility to protect the security of any confidential information provided to, or generated by the organization.[25] In the case of IFAD this requirement could be stated as follows by the Governing Council:

> "Member States shall require their representatives to protect the security of any confidential information provided to, or generated by the Fund in accordance with the rules and guidelines of the organisation."

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[24] Code of Conduct for Board Officials of the World Bank Group, para. 5.; Code of Conduct for the Members of the Executive Board of the IMF, para. 4.; Code of Conduct for Officials of the Board of Directors of the EBRD, rule 11; Code of Conduct for Executive Directors of the AfDB and the AfDF, article 4; Code of Conduct for the Directors of the ADB, para. 9.

[25] Code of Conduct for Board Officials of the World Bank Group, para. 4; Code of Conduct for the Members of the Executive Board of the IMF, para. 5; Code of Conduct for Officials of the Board of Directors of the EBRD, rule 10; Code of Conduct for Executive Directors of the AfDB and the AfDF, article 15; Code of Conduct for the Board of Directors of the ADB, para. 7.

vi. Public statements

21. In IFAD, the Executive Board operates exclusively on a collective basis and the representatives of Members and Alternates are not externally recognizable as such. It would appear that since the representatives remain officials of the designating Member States, unlike in the case of the other multilateral institutions,[26] in IFAD no useful purpose will be served by a stipulation that states that when making public statements or speaking to the media on Fund-related matters, representatives should make clear whether they are speaking in their own name or on behalf of the Executive Board.

vii. Conflicts of interest

22. It is common for codes of conduct of multilateral financial institutions to provide that in performing their duties, Executive Directors will carry out their responsibilities to the exclusion of any personal advantage, and that they should avoid any situation involving a conflict, or the appearance of a conflict, between their personal interests and the performance of their official duties. The codes further provide that if such a conflict arises, Executive Directors should promptly inform the Ethics Committee and withdraw from participation in decision-making connected with the matter. If the conflict is potential rather than actual, Executive Directors should seek the advice of the Ethics Committee of the Board about whether they should recuse themselves from the situation that is creating the conflict or the appearance of conflict.[27]

23. It is to be presumed that, as they are serving government officials, the persons that represent Member States in IFAD's Executive Board are subject to the professional codes of conduct of their State and that by virtue thereof they are supposed to avoid conflicts of interest as described above. This presumption could be restated in the following terms in an IFAD code:

> "Member States shall ensure that they have appropriate rules and procedure in place to ensure that their representatives will carry out their responsibilities to the exclusion of any personal advantage, and that the representatives shall avoid any situation involving a conflict, or the appearance of a conflict, between their personal interests and the performance of their official duties. Similarly, for the event that such a conflict arises, Member States shall require that their representatives should promptly inform the national authority and withdraw from participation in decision-making connected with the matter."

24. It must be conceded, however, that from a pure legal standpoint, applying the concept of conflict of interest to the representatives of Member States is somewhat contradictory. As these representatives are officials of their governments, they owe loyalty to those governments and act upon the latter's instructions. Thus requiring a person that is

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[26] Code of Conduct for Board Officials of the World Bank Group, para. 2(4)(c); Code of Conduct for the Members of the Executive Board of the IMF, para. 6; Code of Conduct for Officials of the Board of Directors of the EBRD, Rule 2(c); Code of Conduct for Executive Directors of the AfDB and the AfDF, article 11; Code of Conduct for the Directors of the ADB, para. 7.

[27] Code of Conduct for Board Officials of the World Bank Group, para. 18; Code of Conduct for the Members of the Executive Board of the IMF, para 7; Code of Conduct for Officials of the Board of Directors of the EBRD, rule 3(a) and (b); Code of Conduct for Executive Directors of the AfDB and the AfDF, article 12; Code of Conduct for the Board of Directors of the ADB, para. 4(a) and (b).

executing a government instruction in an IFAD meeting on account of something related to their personal life, does not fully fit into the image of a delegate. It must be presumed that the Member State, irrespective the personal circumstances of its envoy, is the master of the contents of the instruction and will thus be able to manage the conflict of interest at the national level, without the need for this to reflect in any meeting of IFAD.

viii. Personal financial affairs

25. Multilateral financial institutions provide varyingly that Executive Directors should not use, or disclose to others, confidential information to which they have access, for purposes of carrying out private financial transactions.[28] To capture this principle the Governing Council could state in the code to be developed that:

> "Member States shall require their representatives to avoid having any direct of indirect financial interest in an IFAD operation and not to use information obtained in the discharge of their duties which is not otherwise available to the public for the purpose of directly or indirectly furthering their personal interests or the personal interests of any other person or entity including but not restricted to where this might lead to actual or perceived preferential treatment."

ix. Disclosures

26. Given that the representatives of Member States are not remunerated by IFAD nor are officials of the Fund, IFAD has no legal authority to require financial disclosure in the same way as is done by the other multilateral financial institutions. However, it is to be expected that government officials of the level of the persons eligible for designation as their representative are already subject to requirements under national law to make written disclosure to a compliance officer of any financial or business interests of their own or their immediate family members. Unlike persons who are officials of a multilateral institution, such representatives remain bound by such national requirement while serving on the Executive Board. Thus in the case of IFAD the following provision could be conceived:

> "It is incumbent upon the Member States to have mechanisms in place to ensure that their representatives, upon assumption of office, make written disclosure to a competent authority of any business interests of their own or their spouses that may give rise to a conflict of interest in IFAD. Upon the request of the Executive Board the Member shall share that information with the President."

x. Gifts and entertainment

27. Similar as with regard to financial disclosure, it must be presumed that in regard to acceptance of favours, gifts and entertainment,[29] representatives of Member States are

[28] Code of Conduct for Board Officials of the World Bank Group, para. 8 (b)(i)-(iii); Code of Conduct for the Members of the Executive Board of the IMF, para. 8; Code of Conduct for Officials of the Board of Directors of the EBRD, Rule 8; Code of Conduct for Executive Directors of the AfDB and the AfDF, article 14(i) and (ii); Code of Conduct for the Executive Directors of the ADB, para. 5.

[29] Code of Conduct for Board Officials of the World Bank Group, para. 10; Code of Conduct for the Members of the Executive Board of the IMF, para. 10; Code of Conduct for Officials of the Board of Directors of the EBRD, rule 7; Code of Conduct for Executive Directors of the AfDB and the AfDF, article 16; Code of Conduct for the Executive Directors of the ADB, para. 8.

required under national laws to exercise tact and judgment to avoid the appearance of improper influence on the performance of their official duties. It must be equally presumed that the ordinary courtesies of international business and diplomacy may be accepted, but substantial and unusual gifts, favours and entertainment, as well as loans and other services of significant monetary value, should not be accepted. Therefore, for the same reasons as stated in relation to financial disclosure, a provision stating the responsibility of the Member State should suffice:

> "It is incumbent upon Member States to have rules in place in regard to acceptance of favours, gifts and entertainment by their representatives and that they are required under national laws to exercise tact and judgment to avoid the appearance of improper influence on the performance of their official duties."

xi. Post-IFAD employment

28. As representatives of Member States remain officials of their countries, unlike in the other multilateral financial institutions, IFAD lacks the legal authority to require that when negotiating for, or entering into an arrangement concerning, prospective employment outside the Fund, representatives should not allow such circumstances to affect the performance of their duties.[30] However, IFAD has an interest in ensuring that where involvement in a Fund matter could be, or could be perceived as, benefiting the prospective employer, regardless of whether there is detriment to the Fund or their constituents, representatives should recuse themselves and be replaced from the corresponding session or item. Thus the Governing Council could provide as follows:

> "Member States shall require that when negotiating for, or entering into an arrangement concerning, prospective employment outside the Fund, representatives should not allow such circumstances to affect the performance of their duties. They shall ensure that where involvement in a Fund matter could be, or could be perceived as, benefiting the prospective employer, regardless of whether there is detriment to the Fund or their constituents, representatives should recuse themselves and be replaced from the corresponding session or item."

29. The other multilateral financial institutions also have a cooling-off period for post-service employment with the institution.[31] In the case of the Fund this can be achieved in the following way by a provision in the human resources policy adopted by the Executive Board:

> "In the exercise of his appointment and contracting authority under the Agreement, the President shall not consider eligible for appointment as a staff member or contracting as a consultant or for any representative of a Member State who has served on the Board less than two (2) years following the end of such service."

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[30] Code of Conduct for Board Officials of the World Bank Group, para. 9(c); Code of Conduct for the Members of the Executive Board of the IMF, para. 11; Code of Conduct for Officials of the Board of Directors of the EBRD, rule 6(a)-(b); Code of Conduct for Executive Directors of the AfDB and the AfDF, article 17(i)-(ii); Code of Conduct for the Executive Directors of the ADB, para. 6(a).

[31] Code of Conduct for Board Officials of the World Bank Group, para. 9(e); Code of Conduct for the Members of the Executive Board of the IMF, para. 11; Code of Conduct for Officials of the Board of Directors of the EBRD, rule 6(c); Code of Conduct for Executive Directors of the AfDB and the AfDF, article 17(iii); Code of Conduct for the Executive Directors of the ADB, para. 6(b).

(c) Ethics Committee

30. A non-plenary Ethics Committee of the Board to consider matters relating to the codes of conduct is also standard in the other multilateral financial institutions. In addition, Ethics Committees are authorized to them the Board on ethical aspects of conduct, including the conduct of their Alternates, Advisors and assistants. It is common for the codes to provide that General Counsel of the institution, or if absent his/her representative, shall be the permanent secretary of the Committee. It appears that the Asian Development Bank differs from this rule. In that institution the Secretary of the institution acts as Secretary of the Ethics Committee. The meetings of the Ethics Committee shall be restricted to members only and the permanent secretary of the Committee except at the Committee's invitation. The responsibility of the Ethics Committees is to consider any alleged misconduct by an Executive Director, and any matters brought to its attention by the compliance officer concerning the disclosures made by Executive Directors about any actual or potential conflict of interest. The Executive Director concerned shall, in all cases, be given the opportunity to present his/her views to the Committee. If the Ethics Committee concludes that misconduct has been committed, and taking into account both the nature and seriousness of the misconduct and the Executive Director's prior record of conduct, the members of the Committee shall make recommendations to the Executive Board regarding whether a warning should be issued to an Executive Director, and whether such warning should be conveyed to the Governor(s) of the Member State (or States) that appointed, elected or designated the Executive Director.

31. As stated above, in IFAD, a similar Ethics Committee could be established by the Board pursuant to rule 11 of its Rules of Procedures. In the other institutions such Ethics Committees operate as follows. Upon receiving the recommendations of the Ethics Committee, the Executive Board would consider which of the following actions to take: (i) no further action in the matter; (ii) issuance of a warning to the Executive Director; or (iii) issuance of a warning to the Executive Director and transmittal of the warning to the Governor(s) of the member country (or countries) that appointed, elected or designated the Executive Director. The Executive Director concerned shall, in all cases, have the opportunity to present his/her views to the Committee of the whole, but shall not participate in the deliberations on the case.[32] Given that no sanction will have to be imposed by, but rather that the Member State concerned will be informed of any recommended action, there is no legal objection against replicating the above system within IFAD. The question is, however, whether such Committee would be needed in IFAD, given that the Executive Board is not composed of individuals but of Member States. Thus in the case of IFAD such a Committee would not be overseeing activities of officials of the organization itself, but of representatives of Member States, although it would have no power over such representatives.

[. . .]

5 October 2009

[32] Code of Conduct for Board Officials of the World Bank Group, para. 17(c); Code of Conduct for the Members of the Executive Board of the IMF, para. 12; Code of Conduct for Officials of the Board of Directors of the EBRD; Code of Conduct for Executive Directors of the AfDB and the AfDF, article 18(iv); Code of Conduct for the Executive Directors of the ADB, para. 10.

(*b*) Concept note to the Executive Management Committee (EMC) regarding managing partnerships with Member States in contribution arrears

IRREVOCABLE OBLIGATION OF MEMBER STATES TO SUBMIT PAYMENT OF INITIAL CONTRIBUTIONS—IFAD'S JUSTIFIED AND UNWAVERING CLAIM TO RECEIVE REPLENISHMENT CONTRIBUTIONS—REDUCTION OR EXEMPTION OF CONTRIBUTIONS IS NOT PERMITTED—EXTINCTIVE PRESCRIPTION—THE PASSAGE OF TIME IS NOT DEEMED TO EXTINGUISH THE CLAIM OF LIQUIDATED SUMS—ATTRIBUTION OF PROJECT FINANCING TO A MEMBER STATE WITH CONTRIBUTION ARREARS—OBLIGATION TO SEEK FINALITY IN ACCORDANCE WITH CUSTOMARY INTERNATIONAL LAW—DISPUTES REGARDING CONTRIBUTION ARREARS MAY BE REFERRED TO THE INTERNATIONAL COURT OF JUSTICE FOR AN ADVISORY OPINION

A. Background

1. In response to a request made during the EMC meeting of [date], this concept note will address the issue as to how the Fund should manage partnerships with Member States in contributions arrears.

2. According to the information that has been received by this Office from the Finance Committee (FC), at present, 48 Member States have made commitments that have not been fulfilled. Of these 48 Member States, 4 Member States have unfulfilled initial resources commitments totalling approximately [sum]. On the other hand, all these Member States have unfulfilled replenishment commitments totalling approximately [sum]. In summary, unpaid contribution and replenishment commitments attain approximately [sum]. This outstanding amount poses significant challenges to the funding capacity of IFAD.

3. Unlike the case of loan arrears, at present the Fund has not formulated a policy on how to deal with contribution arrears owed by Member States. According to the information provided by FC, the settlement of contribution arrears has so far been mainly pursued on a case by case basis with Member States. However, the overall issue has never been followed up by senior management. Given the implications that unpaid contribution commitments could have to the Fund's operations, it is recommended that the Fund addresses this question without any further delay.

B. Summary of conclusions

4. Although a more detailed analysis of the recommendations put forward by this Office is provided below, at this conjecture, a summary of the conclusions of this paper shall be articulated.

5. Firstly, IFAD has the legal right to receive the amount that was committed to its benefit by a Member State in the instrument of ratification, acceptance, approval, or accession deposited by the Member State during the course of the initial contributions of IFAD. The irrevocable obligation is registered with the international treaty giving rise to IFAD and carries a very significant political and legal weight. As far as replenishment contributions go, IFAD also maintains a justified and unwavering claim to receive the full amount. On this matter, perhaps the advisability of reorganizing or restructuring the future Governing Council replenishment resolutions may be explored so that they clearly set out the commitments for Member States in unequivocal terms.

6. Moreover, the Agreement Establishing IFAD* (the Agreement) does not permit approving reductions of, or "forgiving", contribution commitments. Section 3 of regulation X of the Financial Regulations of IFAD is a clear example of the foregoing.

7. Furthermore, the reporting system currently being implemented by IFAD, through the President's reports to the Governing Council on the status of contributions, needs to be overhauled, reformed and developed in order to better engage IFAD's governing bodies in a more assertive and complete reporting system. In this way, reference is made to the reporting systems of other international financial institutions, like the International Monetary Fund (IMF), where reporting mechanisms include enforcement measures that compel the Member State to act with regards to its contribution arrears. The recommendation of implementing similar reporting systems is therefore submitted.

8. On the other hand, IFAD can attribute project financing to a Member State whom has contribution arrears if it wishes to; there are no legal impediments that would prevent IFAD from doing so.

9. Finally, customary international law instructs that IFAD is held to an obligation to seek finality on the issue concerning a Member State's contribution arrears. The obligation to seek finality implies that IFAD and the Member State must establish a communication channel in furtherance of the aim to seek a peaceful settlement to the Member State's contribution arrears. It is of course possible that a Member prefers that a third party is asked to rule on the question as to whether they owe a contribution. In this case, and without pre-empting what the decision of the Executive Board or the Governing Council may be, considering IFAD is an international organization, the Executive Board or the Governing Council may opt to refer the dispute to the International Court of Justice for an advisory opinion.

C. Legal analysis

I. IFAD's right to receive contribution commitments

10. IFAD's right to receive contribution commitments must be distinguished between initial contribution commitments versus replenishment commitments. Indeed, as shall be demonstrated, the obligation to contribute to the initial resources of the Fund carries more weight than the commitment a Member State has made with regards to replenishment contributions.

11. Following the creation of IFAD, the Agreement establishing IFAD provided that original Members in categories I or II were bound to contribute to the initial resources of IFAD, the amount expressed in their instrument of ratification, acceptance, approval or accession (section 2 a) of article 4 of the Agreement). In this way, the contribution amount specified by the Member in its instrument of ratification, acceptance, approval or accession was registered and formed a part of the treaty that gave rise to IFAD. It is equally worth mentioning that the Agreement is registered with the United Nations Treaty Section. As a result, the obligation to pay the amount specified in the instrument of ratification, acceptance, approval or accession is an inherent and irrevocable obligation that falls upon Member States. The legal weight of this assertion is further compounded by the fact that nothing, including the termination of the operations or the distribution of the assets

* United Nations, *Treaty Series*, vol. 1059, p. 191.

of the organization, could possibly exempt a Member State from contributing to the initial resources of IFAD.

12. Article 4, Section 2 a) of the Agreement was later amended by resolution 86/XVIII of the Governing Council in 1995, so that henceforth there is no obligation for Members from category I and II to contribute to the initial resources of IFAD. Therefore, contributions to IFAD are now voluntary and any new Member State shall specify in its instrument of ratification, acceptance, approval or accession the amount of its voluntary contribution. It is worthy to recall that the majority of Member States in contribution arrears are Members from category II who were originally bound to contribute to the initial resources of IFAD. In any case, the fact that contributions are now voluntary does not diminish in any way the obligation mentioned above.

13. Other than the initial contributions and the voluntary initial contributions mentioned in paragraphs 5 and 6 above, section 3 of article 4 of the Agreement stipulates that in order to assure the continuity of the Fund, the Governing Council may invite Members to make additional contributions to the resources of the Fund (the replenishment contributions). Moreover, resolution 22/V of the Governing Council reiterates the position taken in previous Governing Council resolutions by stipulating that, in order to make a contribution in the context of the Replenishment of IFAD, the contributing Member shall deposit with IFAD, as soon as possible, an instrument of contribution confirming the Member's commitment to contribute to IFAD's resources. In light of the above, it can be asserted that IFAD has a legal right to receive the replenishment contribution committed for its benefit if the criteria mentioned above are satisfied.[1] The legal obligation to fulfill replenishment contribution towards the Fund arises once an instrument of contribution has been deposited with the Fund.

II. Waiver of contribution commitment

14. Having established the obligatory nature of the commitments mentioned above, it is necessary to determine if any of the organs of the Fund may waive or "forgive" totally or impartially a contribution commitment to the Fund. It is of course inherent in IFAD's legal personality that it may waive a claim owing to it by a party, including its Member States, provided that the power to waive is neither expressly nor implicitly excluded. An analysis of the Agreement and of IFAD's other basic legal documents shows that the power to approve the reduction or "writing off" of a contribution commitment has not been attributed to any of its governing bodies and seems to be excluded by the very legal structure of the organization. Indeed, the Agreement does not foresee or address the situation of arrears in contribution commitments and as such, it does not propose any explicit solutions with regards to these scenarios. In this regard, two situations must be distinguished: a) the overdue initial contributions, and b) the replenishment contributions.

15. As mentioned earlier, initial contributions are considered to be irrevocable obligations registered with the international treaty giving rise to IFAD. Therefore, initial contributions committed to IFAD in an instrument of ratification, acceptance, approval, or accession and deposited pursuant to the Agreement carry a very significant political and legal weight. The amount of an initial contribution cannot be reviewed or revisited with-

[1] Governing Council resolution 154/XXXII (2009).

out revisiting and modifying the treaty establishing IFAD. The foregoing proves to be a rather unlikely scenario. On the other hand, replenishment contributions pose a different dynamic. This Office had previously opined, in an Office memorandum dated [date], that arrears in payments against instruments of contribution and promissory notes made during the course of the replenishment contributions may be reconsidered by a decision of the Governing Council. Hence, it would seem feasible for the Governing Council to authorize the "writing off" of arrears in payments against an instrument of contribution or a promissory note. Nevertheless, a careful reading of the Agreement and the aforementioned Office memorandum clearly establish the illusory nature of such an authorization by the Governing Council. Indeed, section 3 of article 4 of the Agreement, which forms the legal basis to replenishment resolutions and the contributions it ensues, stipulates that the replenishment contributions are made in the spirit of reviewing the adequacy of the resources available to the Fund, in the aim of exploring the advisability of seeking additional contributions from Member States. Moreover, the power to approve replenishment resolutions and any modification therewith, is a power that is reserved with the Governing Council in light of resolution 86/XVIII of the Governing Council. Therefore, if the Governing Council were to authorize reductions in replenishment contributions, it would by corollary have to conclude that the replenishment contributions it initially authorized are no longer necessary to ensure the adequacy of the Fund's resources. Furthermore, just like the Office memorandum clearly asserted, the waiver of a replenishment contribution would lead to accusations of discriminatory practice as well as hamper the delicate balance between contributions made from Member States in categories A, B, and C. For these reasons, it is hard to fathom how the Governing Council may ever authorize the waiver of replenishment contributions.

16. Hence, in the absence of an authorization emanating from the Governing Council, the obligation to contribute to IFAD's resources, except where so provided under general international law, remains steadfast. In support of this argument, the Financial Regulations of IFAD provide valuable insight. In particular, paragraph 3 of regulation X stipulates that:

> "The President may, after full investigation, with the approval of the Executive Board, authorize the writing-off of losses of cash, supplies, equipment and other assets, other than arrears of contributions or payments due under loan or guarantee agreements and shall inform the Executive Board."

17. The above provision notes that the power of writing off contribution commitments owed to IFAD is not within the President's ambit of powers and it reiterates the principle that the Fund does not "forgive" arrears in contributions.

18. To further buttress this argument, one may wish to consider the provision dealing with the option of commensurate modification that can be found in several replenishment resolutions,[2] most recently in paragraph 14 a) of the Governing Council resolution 154/XXXII on the Eighth Replenishment of IFAD's resources:

> "(a) Option of Commensurate Modification. In the case of an undue delay in the deposit of an instrument of contribution or in payment or of substantial reduction in its contribution by a Member, any other Member may, notwithstanding any provision to the contrary in this resolution, at its option, after consultation with the Executive

[2] See also Governing Council resolutions 141/XXIX (2006), 130/XXVI(2003), 119/XXIV(2001), 87/XVIII, 56/XII, and 37/IX.

> Board, make a commensurate modification, ad interim, in its schedule of payment or amount of contribution. In exercising this option, a Member shall act solely with a view to safeguarding the objectives of the replenishment and avoiding any significant disparity between the relative proportion of Members' total contributions until such time that the Member whose delay in the deposit of an instrument of contribution and/or payment or reduction in its share causing such a move by another Member has acted to remedy the situation on its part or the Member exercising the option revokes its decision taken under this provision."

19. Clearly, the commensurate modification option is not intended to lead to an actual reduction of contribution commitments already made. Instead, it is a measure put at the disposal of IFAD Members in order to apply collective and persuasive pressure on Members who delay either depositing their instrument of contribution or paying their contribution, or who choose to substantially reduce their contribution commitments. Indeed, in exercising this option, the Member shall act solely with a view to safeguard the objectives of the replenishment. Moreover, it should also be noted that the application of the commensurate modification option is limited in terms of time and scope. Firstly, the exercise of this option shall be limited until such time that the Member whose delay in the deposit of an instrument of contribution and/or payment or reduction in its share has acted to remedy the situation. Secondly, the scope of the commensurate modification option is also limited in terms of proportions, i.e., a Member shall only make a commensurate modification in its schedule of payment or amount of contribution. From the foregoing, the commensurate modification option put aside, no other reduction in contribution amounts or payments thereof are permitted according to IFAD's basic legal documents.

III. Termination of obligations under international law

20. In the absence of any provision in the Agreement that would allow IFAD's governing bodies to forgive contribution commitments, the non-fulfilment of a contribution commitment may only be possible where a Member holds the right to invoke one or more of the conditions precluding wrongfulness under international law or any of the conditions under which treaty obligations can be suspended or terminated.

21. It should be noted that according to international law, and more specifically the 1969 Vienna Convention on the Law of Treaties[*] (hereby, Vienna Convention), the application of which is limited to States only, and the 1986 Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations,[**] a State can suspend or terminate the application of a legal obligation under the following circumstances: (i) there is a material breach by any contracting party, in which case the party concerned may suspend or terminate the application of the obligation in relation to the defaulting party, (ii) external circumstances dictate a supervening impossibility of performing the duty imposed by the treaty, (iii) there happens to be a fundamental change in circumstances, and (iv) the emergence of a new peremptory rule of general international law renders any conflicting obligation void.

22. In any case, should a Member State choose not to fulfill its contribution commitments, the burden of demonstrating and proving that one of the grounds of suspension

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[*] United Nations, *Treaty Series*, vol. 1155, p. 331.

[**] A/CONF.129/15 (not yet adopted).

or termination mentioned above is satisfied rests upon it. Otherwise, IFAD's legal right to receive the full contribution commitments shall remain intact and in full force.

IV. Assertion of IFAD's claim under international law; the question of extinctive prescription

23. In order to address the question as to whether the Fund still has a claim under international law against Members in contribution arrears, recourse is had to the decisions of international tribunals in similar matters. One of the main considerations that international tribunals take into account is the question of "loss of the right to invoke responsibility". This question is governed by different, overlapping and competing legal concepts, such as waiver, acquiescence and extinctive prescription.[3] However, what is relevant to IFAD's situation is the concept of extinctive prescription.

24. Under general international law, the concept of extinctive prescription is based on the rationale that the lapse of time may lead to the elimination of legal positions. Despite the recognition in a great number of decisions that extinctive prescription is a ground for loss of claims[4] no fixed time-limits have ever been agreed upon. As such, this concept is applied on a case to case basis with considerable flexibility, and it involves the balancing of all relevant circumstances.[5]

25. One concern of the rules relating to delay is that additional difficulties may be caused to the respondent State due to the lapse of time; for instance, concerns over the collection and presentation of evidence.[6] Accordingly, a claim will not be inadmissible on grounds of delay, unless the circumstances are such that the respondent State has been seriously disadvantaged. While arbitral practice does not allow for a clear-cut definition of when defendant States are held to be at a disadvantage, the basic rationale was succinctly expressed in the *Loretta G. Barberie* case, where the arbitrator's views were that, delay in presenting claims would "produce certain inevitable results, among which are the destruction or obscuration of evidence by which the equality of parties is destroyed". In contrast, the argument for delay has been rejected in circumstances where the respondent State could not establish the existence of any prejudice on its part, namely where it has:

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[3] See James Crawford, "Loss of Right to Invoke", in *The International Law Commission's State Responsibility Articles: Introduction and Overview*, Daniel Bodansky and John R. Crook (The American Society of International Law, American Journal of International Law, 2002).

[4] *Certain Phosphate Lands in Nauru (Nauru* v. *Australia), I.C.J. Reports 1992*, p. 250, para. 20.

[5] Applied to specific cases, a lapse of more than 30 years did not constitute a bar against presenting a claim. See, for example, Tagliaferro Case, 1903, United Nations, *Reports of International Arbitral Awards*, vol. X, p. 593; Giacopini Case, 1903, United Nations, *Reports of International Arbitral Awards*, vol. X, p. 594. However, in the *Loretta G. Barberie* v. *Venezuela*, the arbitrators held 15 years to constitute an unreasonable delay giving rise to prescription (John Bassett Moore, *History and digest of the international arbitrations to which the United States has been a party, together with appendices containing the treaties relating to such arbitrations, and historical legal notes*, United States and Venezuelan Claims Commission Opinions, 1889–90, vol. 4, pp. 4199–4203 (Washington, Government Print Off., 1898). Available from http://www.heinonline.org/HOL/Page?collection=beal&handle=hein.beal/hdi0004&id=967).

[6] See James Crawford, "Loss of Right to Invoke".

(i) always been cognizant of the claim, and (ii) was in a position to collect and preserve evidence relating to the claim.[7]

26. International courts generally engage in a flexible weighing of relevant circumstances in any given case, taking into account such matters as the conduct of the respondent State and the importance of the rights involved. The decisive factor is whether the respondent State has suffered any prejudice as a result of a delay, in the sense that the respondent could have reasonably expected that the claim would no longer be pursued.[8] It has been established that the requirements for exacting contractual (liquidated) claims differ from non-contractual (non-liquidated) claims.[9] Accordingly, unless there is an express waiver or an abandonment of claims, it cannot be admitted that a respondent State could not have expected that a liquidated claim will not be pursued. IFAD's claim is a liquidated claim, and therefore, this principle would apply.

27. Unlike the payment of unliquidated sums, in the case of liquidated sums, the passage of time is not deemed to extinguish the claim. The distinction between liquidated and unliquidated sums of money plays an important role in answering the question as to what brings about the discharge of payments of monetary obligations. In particular, the time at which the payment of liquidated claim should be made depends on the terms of the instrument. The general rule is that time is not of the essence unless: the express terms of the instrument require otherwise, the nature of the instrument requires a contrary conclusion, or finally, if the debtor's delay becomes a fundamental breach. Where time is of the essence, exact compliance is required and the courts are reluctant in finding a waiver of the term.[10] Although IFAD's replenishment resolutions do not expressly state time to be of the essence, Members commit to making payments within the replenishment period, which is normally a three-year period unless a Member State and IFAD agree to a different time frame. Indeed, when the Members deposit their instruments of contributions, they specify a time frame within which they will make their replenishment contributions. Accordingly, the commitment to pay within the specified time frame is a binding commitment. Failure to pay in due time does not extinguish the obligation but rather triggers the secondary obligation to pay the amount due plus compensation in the form of monetary interest.

28. Moreover, it is submitted that it cannot be validly claimed that there has been any delay in presenting claims. It is clear from the practice of the Governing Council that IFAD has consistently affirmed its claims to outstanding contributions. This is most evident in the Governing Council resolutions of IFAD's replenishment, which starting with the Second Replenishment, invariably urge those Members, which have not yet paid the full share of their previous contributions to the resources of the Fund, to adopt effective measures to complete such payments as soon as possible.[11] It could therefore be argued that the extinctive prescription is pre-empted or interrupted where the holder of a right exercises that right. Previously, having studied the progress report on the First Replenishment (GC 6/L.7), the Governing Council appealed to all Members to meet their financial obligations

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[7] See *Tagliaferro case,* R.I.A.A vol.X, p.592 (1903); and Stevenson R.I.A.A.,vol.IX, p.385 (1903).

[8] See James Crawford, "Loss of Right to Invoke".

[9] *Ibid*.

[10] F.A Mann, *The Legal Aspect of Money*, Fifth Edition (Oxford, Clarendon Press, 1992).

[11] See preamble of Governing Council resolutions 37/IX and more recently resolutions 119/XXIV (2000), 130/XXVI (2003), 141/XXIX (2006) and 154/XXXII (2009).

to IFAD in a timely manner. In this regard, it is useful to recall that in *Certain Phosphate Lands in Nauru*, the International Court of Justice held it to be sufficient that Nauru had referred to its claims in bilateral negotiations with Australia in the period preceding the formal institution of legal proceedings in 1989.[12]

V. Responsibility of the president to seek finality

29. The President being the legal representative of IFAD is responsible for conducting the business of the Fund, under the control and direction of the Governing Council and the Executive Board. This responsibility entails, *inter alia*, the duty to collect contribution arrears due to the Fund. As such, in order to fulfill his duties to the Fund, the President has the discretion to explore, as well as put in place, internal dispute settlement processes, including negotiations and other amicable dispute settlement options. However, in the event the President encounters problems in collecting the aforementioned arrears through an amicable process, then he may explore other settlement options envisaged under the Agreement so as to seek finality on the matter.

30. As a matter of fact, starting with the First Replenishment resolution, the Governing Council has consistently entrusted both the President and the Executive with significant responsibilities with respect to the Fund's replenishment consultations and activities. In this regard, paragraph 4 of resolution 147/XXXI of the Governing Council instructs that: "The President of IFAD is requested to keep the Executive Board informed of the progress of the deliberations of the Consultation"; and paragraph 5 provides that: "The President of IFAD is requested to provide such assistance to the Consultation as may be necessary for the effective and efficient discharge of its functions." Moreover, paragraph 22 of resolution 154/XXXII of the Governing Council provides that: "The President of the Fund shall be requested to submit to the thirty-third session and subsequent sessions of the Governing Council reports on the status of commitments, payments and other relevant matters concerning the replenishment. The reports shall be submitted to the Governing Council together with the Executive Board's comments, if any, and its recommendations thereon."

31. Furthermore, the resolutions also determine that the Executive Board shall periodically review the status of contributions and shall take such actions, as may be appropriate, for the implementation of the said resolutions.[13] The above mentioned replenishment resolutions determine the proactive role the President (in conjunction with the Executive Board) is assigned in view of ensuring contribution payments. The replenishment resolutions therefore task the President with important initiatives in this regard. Most importantly, the President is to submit reports that highlight the status of contribution arrears, in the overall objective of enforcing the Fund's right to receive its contribution commitments. The scope of these powers is broad enough to encompass powers to submit recommendations and enforcement measures in the reports. On this point, the current reports of the President on the status of contribution payments lack assertiveness and present shortcomings.

32. As a matter of fact, if one were to examine recent reports on the status of contributions to the Fund's replenishments, say for example the report on the Sixth Replenishment

[12] *Certain Phosphate Lands in Nauru*.

[13] Governing Council resolution 22/V (1982).

of IFAD's resources (GC 29/L.3), or the report on the status of contributions to the Seventh Replenishment of IFAD's resources (GC 32/L.4), one would appraise a very factual assessment of contribution commitments, and the payments thereof, for a specific replenishment cycle. In this way, the reports do highlight arrears in contribution commitments in a non-targeted fashion, albeit such disclosure is limited to the contribution commitments of a specific consultation period. What is absent however is the lack of any recommendations arising from the President or Executive Board in the aim of enforcing the Fund's right to receive the contributions that were committed to its benefit. The reports are thus devoid of any enforcement recommendation mechanisms. This reality stands in contrast to the practice adopted by other international financial institutions, most notably the IMF, where a very thorough process of reporting is implemented to safeguard the payment of the IMF's financial obligations.

33. According to the IMF's reporting mechanism, enforcement measures can go as far as notifying the member that unless the overdue obligations are settled promptly, a complaint will be issued to the Executive Board,[14] followed by further ultimate sanctions, such as suspension of voting and representation rights and procedures on compulsory withdrawal.[15] Other enforcement measures comprise of sending communications to all IMF Governors and the heads of selected international financial institutions regarding the Member's continued failure to fulfill its financial obligations to the IMF. It is also worthy to note that the IMF's system of reporting is more rigorous and targeted than IFAD's system of reporting. The Fund may seek guidance in the targeted approach of the IMF: immediate and prompt communications are sent to the Member State informing them of their contribution arrears and urging action in a well-defined timeframe. Failure to comply promptly results in further communication by management to the Governor stressing the seriousness of the failure to meet obligations and urging full settlement. The Fund, on the other hand, has been complacent in stressing and urging the payment of its contribution arrears.

34. A preliminary glance at the practice adopted by other international financial institutions demonstrates that other measures being proposed or implemented include calling upon the Member State to explain and justify, to the Executive Board, their failure to pay contribution arrears, coupled with urging the Member State to propose a plan of settlement or a schedule of payment for its contribution arrears. Whatever the case may be, the President may wish to decide on the course of action on a case by case basis. What should be considered however is the fact that a very thorough, rigorous and targeted system of reports and recommendations is paramount in safeguarding the payment of the Fund's financial obligations, as well as being an efficient pre-emptive measure that prevents further escalations and/or corrective measures.

35. Against this background, it is incumbent on the President to act under the provisions of the replenishment resolutions in order to present options to the Board, and ulti-

[14] See IMF, *Review of the Fund's Strategy on Overdue Financial Obligations* (15 August 2008).

[15] It is important to note that amendments to the Articles of Agreement of the IMF were necessary in order to implement the new rigorous reporting system that is followed through by the above mentioned sanctions. See Joseph Gould, "The IMF Invents New Penalties", Towards More Effective Supervision by International Organizations; Essays in Honour of Henry G. Schermers, Volume I, Martinus Nijhoff Publishers, p. 127-147. At this conjecture, this Office has not examined the need to amend the Agreement Establishing IFAD in order to implement a more rigorous reporting system, followed by tougher sanctions.

mately to the Governing Council, for dealing with contributions arrears. In this context, consideration must be given to the possibility that delinquent Members may have a different view about the existence of any obligations, in which case a formal legal determination of whether such obligation exists will be required. As such, in the advent of a dispute, the need to interpret the application of the provisions of the Agreement may arise. In such a situation, the provisions of article 11 of the Agreement are insightful:

> Section 1(a) "Any question of interpretation or application of the provisions of the Agreement arising between a Member and the Fund or between Members of the Fund shall be referred to the Executive Board for a decision . . ."
>
> Section 1(b) "Where the Executive Board has given a decision . . . any Member may require that the question be referred to the Governing Council, whose decision shall be final. Pending the decision of the Governing Council, the Fund may, so far as it deems necessary, act on the basis of the decision of the Executive Board."

36. It is of course possible that the Member in question prefers that a third party is asked to rule on the question as to whether they owe a contribution. In this case, and without pre-empting what the decision of the Executive Board or the Governing Council may be, considering IFAD is an international organization, the Executive Board or the Governing Council may opt to refer the dispute to the International Court of Justice for an advisory opinion. Such an advisory opinion will undoubtedly be premised on general principles of international law, as outlined earlier. Whereas an advisory opinion is not binding, it is persuasive and may inform the Fund on the next cause of action, as well as any enforcement mechanisms.

D. Recommendation

37. To recapitulate, IFAD has the legal right to receive the amount that was committed to its benefit by a Member State in the instrument of ratification, acceptance, approval, or accession deposited by the Member State during the course of the initial contributions of IFAD. The irrevocable obligation is therefore registered with the international treaty giving rise to IFAD. As a result, the commitment made by a Member State carries a very significant political and legal weight. As far as replenishment contributions go, IFAD also maintains a justified and unwavering claim to receive the full amount. On this matter, perhaps the advisability of reorganizing or restructuring the future Governing Council replenishment resolutions may be explored so that they clearly set out the commitments for Member States in unequivocal terms. Moreover, the Agreement does not permit approving reductions of, or "forgiving", contribution commitments. Section 3 of regulation X of the Financial Regulations of IFAD is a clear example of the foregoing. Nevertheless, IFAD can attribute project financing to a Member State whom has contribution arrears if it wishes to. There are no legal impediments that would prevent IFAD from doing so. Finally, customary international law instructs that IFAD is held to an obligation to seek finality on the issue concerning a Member State's contribution arrears.

38. The obligation to seek finality implies that IFAD and the Member State must establish a communication channel. In furtherance of this objective, the following actions may be considered: (i) establishing channels of communication with the Government of the Member State having contribution arrears, (ii) specifying that the purpose of the discussions is to reach an agreement on a procedure to bring closure to the Member State's

contribution arrears, and (iii) indicating that any follow-up action is subject to the submission of reports pertaining to points (i) and (ii).

39. In summary, the reporting system currently being implemented by IFAD needs to be overhauled, reformed and developed in order to better engage IFAD's governing bodies in a more assertive and complete reporting system.

40. As a last resort, IFAD may have to brace itself for circumstances where there exists a steadfast difference of opinion with Member states on the issue of their contribution commitments. It should be recalled that the advisable solution to this impasse resides in engaging countries in dispute resolution mechanisms, as foreseen in the relationship agreement between the United Nations and IFAD. In this way, IFAD may seek an advisory opinion from the International Court of Justice. According to this recommendation, IFAD and the Member State in question shall agree upon the procedure whereby a legal issue shall be presented to the International Court of Justice, as well as how the International Court of Justice may decide upon the question(s) put before them in their advisory opinion.

17 November 2009

(*c*) Interoffice memorandum concerning the representation of Member States on the Executive Board

HIERARCHY OF THE SOURCES OF LAW OF IFAD—MEMBERS OF THE EXECUTIVE BOARD ARE STATES NOT INDIVIDUALS—ONLY ONE REPRESENTATIVE PER MEMBER STATE AND ALTERNATE MEMBER STATE OF THE FUND

1. INTRODUCTION

In connection with the 98th session of the Executive Board legal advice has been sought by the Representative of [member] on the Executive Board concerning the representation of a Member State on the Executive Board.

It is the policy of the Office of the General Counsel to only provide formal legal opinions when requested by a competent body of the Fund and not to individual representatives of members of such organs, or when an issue comes to its attention which merits the consideration by that organ. However, in light of the circumstances and on the request of the precedent, this Office has agreed to exceptionally issue the present opinion based on a bilateral request.

In order to provide an answer to the above query a general overview of the legal documents and the hierarchy of the Fund's sources of law will be first carried out.

2. GENERAL BACKGROUND

Under international law a State may send a delegation to an organ or to a conference in accordance with the rules of the Organization. Similarly, Member States may designate permanent representatives to represent them in the various organs of an international organization. A Member State may specify in the credentials issued to its permanent representative that he is authorized to act as a delegate to one or more organs of the Organization. Under international law, it is presumed that unless a Member State provides oth-

erwise, its permanent representative may act as a delegate to organs of the Organization for which there are no special requirements as regards representation. The general rules of international law apply subject to the specific rules adopted by the international organization concerned.[1] In the case of IFAD, there are three main documents that regulate, *inter alia*, the attendance at meetings of the Executive Board: the Agreement Establishing IFAD (the Agreement),[**] the By-Laws for the Conduct of the Business of IFAD and the Rules of Procedure of the Executive Board.

2.1. The Agreement

The powers and functions of the Executive Board are delineated by the Agreement. The Agreement constitutes the basic law of the Fund, and every decision must conform to it. No action may be proposed or decision made by the Executive Board or by any other governing body in conflict with its provisions.

2.1.1. Members of the Executive Board are States, not individuals

Article 6, section 5 (a) of the Agreement provides that the Executive Board shall be composed of 18 members (i.e., 18 Member States) and up to 18 alternate members (i.e., 18 alternate Member States) elected from the Members of the Fund at a session of the Governing Council. Members of the Executive Board shall serve for a term of three years. Thus, contrary to the situation in the International Monetary Fund (IMF), the International Development Association (IDA) and the International Finance Corporation (IFC), in IFAD the Executive Board is composed of members "elected from Members of the Fund".[2] Accordingly, when the Governing Council elects members of the Executive Board through the process set forth in schedule II of the Agreement, it does not elect any particular individual, but States.[3] The Executive Board acknowledged this particularity at its first session on 14 December 1977.[4]

Each member and alternate member attending a session of the Board shall be represented by the designated representative. In this respect it is to be noted that, unlike the case of the aforementioned organizations, none of IFAD's basic documents employ the term "Executive Director" to refer to the representative of a member of the Executive Board, despite the fact that term is colloquially being used in IFAD. The official denomination used by the Agreement, the By-Laws and most notably rule 7 of the Rules of Procedures of the Executive Board is: "Representative of a Member or Alternate".[5]

Whereas article 6, section 2 (a) of the Agreement clearly foresees that for the purpose of representation on the Governing Council each member shall appoint one Governor as its principal representative and an alternate, the number of representatives for the Execu-

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[1] See the rules reflected in *Vienna Convention on the Representation of States in their Relations with International Organizations of a Universal Character,* 1975 (not yet in force).

[**] United Nations, *Treaty Series*, vol. 1059, p. 191.

[2] Section 5(a) of article 6 of the Agreement.

[3] See schedule II 3(a)-(c) of the Agreement.

[4] Minutes of the first session of the Executive Board of IFAD of 6 February 1978 (EB/1), para. 9.

[5] See article 6, section 5 (e) of the Agreement and section 4 of the By-Laws for the Conduct of the Business of IFAD.

tive Board is not specified. Indeed, article 6, section 5 (e) of the Agreement refers to "representatives of a member or of an alternate member of the Executive Board" by using the term in plural.

2.2. The By-Laws for the Conduct of the Business of IFAD (By-Laws)

The By-Laws for the Conduct of the Business of IFAD, adopted by the Governing Council pursuant to article 6, section 2(f) of the Agreement, are intended to be complementary to the Agreement and shall be construed accordingly.[6] This means that article 6, section 5 (e) of the Agreement is to be taken into consideration when interpreting the other rules regarding Executive Board representation and participation. In particular, section 4 of the By-Laws provides the following:

> "Each member and alternate member of the Executive Board shall appoint a person competent in the fields of the Fund's activities to represent it on the Board. Each such representative shall serve on the Board for at least one term of the member or the alternate member concerned, unless such member decides otherwise."

The above provision of the By-Laws deals with the issue of who is to be the representative of a Member/Alternate on the Board and has two main functions. The first function is to establish competency in the fields of the Fund's activities as a fundamental requirement of the person to be appointed. Considering the nature of IFAD as an international financial institution, expertise is therefore demanded in such area and it is also essential that the person to be appointed be familiar with the documentation dispatched by the Fund requiring action by the Executive Board. The second function is to allow Executive Board Members to identify the person authorized to exercise the membership rights, including voting, on behalf of the Executive Board Member represented.

2.3. The Rules of Procedure of the Executive Board

The Rules of Procedure of the Executive Board, adopted by the Executive Board at its first session in 1977, are an additional instrument to the Agreement and the By-Laws, and regulate the procedural aspects of the Board sessions. More specifically, while the By-Laws deal with the issue of who is to be the representative of a Member on the Board, on the other hand the Rules of Procedure of the Executive Board concern the participation in the Executive Board sessions.

In this regard rule 7 of the Rules of Procedure states that:

> "Each member and alternate attending a session of the Board shall be represented by the representative whose name shall be communicated to the President by the official channel established by the State concerned [. . .]."

The requirement that the communication has to be done by the official channel relates to section 2.1 of the By-Laws, which prescribes that each Member State shall designate an appropriate official entity for communication between itself and the Fund in connection with any matter arising under the Agreement. A communication between the Fund and such entity shall constitute a communication between the Fund and the Member.

It is to be noted that although the Executive Board could have decided to permit more than one representative to participate in the Board Room in the course of its sessions, like

[6] Preamble of the By-Laws for the Conduct of the Business of IFAD.

it is permitted in the Governing Council to the Governors and their alternates, it expressly declined to do so. Indeed, during the first session of the Executive Board (14–15 Dec. 1977), the Board decided that in accordance with the Rules of Procedure each Member (State) and Alternate Member (State) would have only one representative present at a Board meeting. In addition, when a Member suggested during the session that advisers be invited to the Board meeting to assist the Executive Board Representative on a specific issue, the proposal was not accepted.[7]

3. Rule 8 of the Rules of Procedure of the Executive Board

Pursuant to rule 8 of the Rules of Procedure, the Executive Board may also invite representatives of cooperating international organizations and institutions or "any person", including the representatives of other Members of the Fund, to present views on any specific matter before the Board. The term "any person" employed in the aforementioned provision is wide enough to encompass officials from both Executive Board Members and Non-Executive Board Members. A confirmation of this assertion is provided in the minutes of the [session] [date] of the Board, where rule 8 of the Rules of Procedure had been employed to allow [Member's] official attend the meeting as an observer, when [Member] was already represented as a Board Member.

In the course of the said session, a policy was adopted under rule 8 by the Board, whereby the President was authorized to admit, at his discretion, one observer per Board session. The observer is to be admitted upon the request of either a Member State represented on the Board or an organization/institution.

4. Conclusions

IFAD rules abide by the principle of international law that each country is free to determine its representation to organs of an international organization. In the context of the Executive Board, the terms "member" and "alternate member" refer to the Member State of the Fund being elected from the members of the Fund, every three years at the annual session of the Governing Council, to sit on the Board. Each Executive Board member and alternate member must designate a representative competent in the fields of the Fund's activities to represent it on the Board. The representative has the right to exercise the membership rights attributed to the Member State represented, including voting. The member and the alternate member shall communicate the name of the representative to the President by the official channel established by the State concerned.

In addition, the Board may also invite any person, including officials of members already represented on the Board, to attend or express views on any specific matter before the Board. Obviously, these officials will not have the same status as the representatives of the Members of the Board.

18 December 2009

[7] Minutes of the first session of the Executive Board, p. 3, para. 7.

(*d*) Interoffice memorandum to the Finance and Administration Department regarding permissibility of the investments of the Fund's resources in a non-Member State

SECURITY LIQUIDITY—IMMUNITY OF INVESTMENTS OF INTERGOVERNEMENTAL ORGANIZATIONS—IN THE ABSENCE OF AGREEMENT WITH NON-MEMBER STATE, SECURITY REQUIREMENT IS NOT MET

I refer to the question raised during the financial briefing of [date] concerning the Fund's exposure to non-Member's banks (mostly government guaranteed) of [. . .] through IFAD's external managers. This Office was asked to advise on the permissibility of the investments of the Fund's resources in a non-Member State. It is assumed that IFAD retains title to assets so invested. For the following reasons this Office considers that the answer to this question ought to be negative:

1. The primer legal provision that governs the issue of the permissibility of the investments of the Fund's resources in a non-Member State can be found in financial regulation VIII.2, which stipulates (*inter alia*) that in investing the resources of the Fund the President shall be guided by the paramount considerations of security liquidity.

2. The critical term in the relevant part of financial regulation VIII.2 is "security". This term should be interpreted to encompass not only the quality of the asset type but also the legal framework surrounding an investment. For the present purposes, suffice it to note that one of the elements that determine the legal security of investments of intergovernmental organizations is the availability of a regime of immunity that protects those assets against interference pursuant the local law. Such immunity serves to protect the resources of the organization against attachment, execution and other judicial measures that could deprive the Fund from the free disposal of its assets and keep them available for when needed to finance the operations.

3. In the absence of an agreement with a non-Member State to guarantee the immunity of the Fund's resources in the territories of such a country, it cannot be said that such resources meet the requirement of security that is prescribed in financial regulation VIII.2.

4. In addition to the issue of security of the assets themselves, there is an additional concern related to the ability to invoke immunity from jurisdiction in case a dispute with any vendor or supplier of service that is not located in a Member State. Precisely to mitigate this risk, section 8 of the General Terms and Conditions for the Procurement of Services directs that the privileges and immunities enjoyed by the Organization under the Agreement Establishing IFAD,[*] the Headquarters Agreement with Italy and the Specialized Agencies Convention shall not be deemed to have been waived. Obviously, this prescript is rendered useless whenever the Fund contracts with a supplier who is located in a jurisdiction that does not accord privileges and immunities to the organization.

5 May 2010

[*] United Nations, *Treaty Series*, vol. 1059, p. 191.

(*e*) Interoffice memorandum to the Investment and Finance Advisory Committee regarding legal considerations when dealing with downgraded and under-performing government bonds in the investments of IFAD

Involvement of the Fund in investment activities as a not-for-profit institution—Investment should only be considered with respect to funds that are not immediately needed for operations and administrative expenditures—Investment is discretionary not obligatory—Security and liquidity criteria—Meagre returns are not alone a reason to retreat

1. Recent stress on the credit rating of certain countries as well as the overall decline of returns on government bonds held in the Fund's investment portfolio prompted the question as to whether affected holdings should be liquidated, and more generally, whether the investment policy should allow greater flexibility in order to maximize returns.

2. The present note purports to supply some legal considerations that are relevant for the reflections, deliberations and answering the foregoing question.

3. At the outset, the nature of the Fund as an inter-governmental organization should be emphasized. As such, the Fund's function is to serve a specified global public good, namely financing agricultural development in developing countries. Inherent in this is that the Fund is not a profit-seeking institution. This frames in a far-reaching way the parameters for its involvement in investment activities, in particular its risk appetite and the types of asset that it can hold in its portfolio.

4. One of the first implications of IFAD's nature in this context is that any investment, if made at all, is necessarily a subsidiary activity. Indeed, this is clearly stated in the Financial Regulations adopted by the Governing Council, which state that the "President may place or invest cash funds, not needed immediately for the Fund's operations or administrative expenditures" (financial regulation VIII.1).

5. Two issues spring to the fore from the latter provision. First and foremost, investment of resources should only be considered with respect to the funds that are not immediately needed for operations (loans and grants) and administrative expenditures. Secondly, even when the foregoing condition is met, investment remains discretionary, not obligatory!

6. The Financial Regulations set further stringent tests to be abided by if and when the President decides to use his discretion to invest resources not immediately needed for disbursing under loans and grants or for administrative expenditures. Financial regulation VIII. 2 states:

> "In investing the resources of the Fund the President shall be guided by paramount considerations of security and liquidity. Within these constraints the President shall seek the highest possible return in a non-speculative manner".

7. The first sentence of the above provision clearly conveys the message that security and liquidity are the most important criteria that any investment should comply with. This is experienced by the term "constraints". In other words, if the President can not ensure that an investment is secure and liquid, he should refrain from authorizing the investment. This is logical because he needs to ensure that the resources are available whenever they are needed for making disbursements or for making payments to defray the costs of the organization. By way of illustration, and stated in simplified terms, this excludes investment in assets and in equities on long term bonds that can only be liquidated at a lower

price than that for which they have been acquired. Moreover, the second sentence of the quoted provision indicates that return maximization only comes into play if, and as long as, liquidity and security is guaranteed. Even then, any pursuit of return optimization should be undertaken in a non-speculative manner.

8. Foregoing analysis holds important keys for dealing with downgraded credit ratings of governments and declining returns on government bonds.

9. As far as the holdings of downgraded government bonds are concerned, the foregoing seems to imply that unless the resources involved are immediately needed for releasing funds for the purpose of disbursements or paying corporate bills, they should not be sold if that implies recovering less funds than were used to purchase them. Similarly, this may require holding those assets to maturity in order to recover the nominal value of the bonds. Since technically governments do not go bankrupt, mere downgrading of credit rating does not necessarily mean a risk by default. In fact, IFAD does not provision against pledges for replenishment when a government's credit rating is downgraded.

10. Regarding the declining returns on certain holdings of government bonds the foregoing implies that meagre return is not alone a reason to retreat. Such retreat would only be justified if it means substituting high yield assets that are at least as secure and liquid for the low yielding ones.

15 December 2010

3. United Nations Industrial Development Organization

(*a*) Interoffice memorandum regarding legitimation cards: residency requirements for citizenship of [State]

Residency requirements for the purposes of qualifying for citizenship are a domestic matter and have no bearing on the obligations assumed by a government under the Headquarters Agreement

1. I refer to your interoffice memorandum of [date], asking me to seek urgent clarification from the [State's] authorities on a recent amendment to the law on citizenship, in terms of which periods of residence under title of a legitimation card will no longer count as residence for the purposes of qualifying for [State's] citizenship. You also propose a draft note verbale to the [State's Ministry] in this connection.

2. Having consulted the protocol office of the [Ministry], I wish to confirm that, as in the past, an individual must still reside in [State] for a minimum of 10 years in order to become eligible for citizenship. What has changed since [date] is that at least five of the 10 years must be based on a residency title other than a legitimation card (e.g., a [residency title] or residency permit).

3. You state that the Staff Council believes that the amendment "can be interpreted as violating Section 29 of Article X of the Headquarters Agreement concerning residence of non-[State] UNIDO staff stationed in the Host Country". You also suggest that the amendment will affect long-serving staff members retroactively.

4. In the view of this Office, these arguments do not provide a sufficient basis for questioning the amendment. Firstly, we do not think that the new law can reasonably be inter-

preted as "violating" the provisions of section 29. Indeed, the new law, being an entirely domestic [State's] matter, has no bearing on the obligations assumed by the Government under section 29—i.e., to facilitate entry into and sojourn in the territory of [State] and to place no impediment in the way of departure from or transit through the country—all of which remain unchanged.

5. Secondly, the general principle prohibiting retroactive changes in the law to the detriment of individual rights is not applicable in the present situation. The Headquarters Agreement does not deal with citizenship or permanent residence, much less grant staff any rights in this respect. It cannot therefore be argued that the new law retroactively alters the rights of staff. Finally, it should also be noted that the new provision does not impinge on the right of abode of retired officials, which is conferred under section 37(i).

6. I trust that the above provides the clarification sought by the Staff Council. However, should you so wish, I would be willing to request a meeting between the Staff Council and representatives of the [Ministry] and [citizenship department] in order to explore the possibility of a practical solution for long-serving staff.

(*b*) Interoffice memorandum regarding an invitation to the Director-General to become a member of the Wise Persons Group of the [organization]

Outside activities of staff members—Role of an international civil servant—Staff should avoid any action which may adversely reflect on their status, or on the integrity, independence and impartiality which are required by that status—Mechanisms for the exchange of ideas and information

1. This is in response to your e-mail of [date], requesting advice in connection with the letter, dated [. . .], inviting the Director-General to become a member of the Wise Persons Group of the [organization].

2. The invitation explains that the [organization] is a global organization representing the gas industry. It notes that the Wise Persons Group was created by the [organization] in [year] and consists of a handful of renowned specialists and experts in the energy sector who are called upon, at specific occasions, to provide their views on energy-related issues or suggest topics that the [organization] should take up. The invitation further notes that one or two members of the group would typically participate as a speaker or moderator at major [organization] events, such as the [organization] Symposium scheduled to take place in [city] in [month] this year. The travel costs related to such activities are covered by the [organization].

3. I will begin by recalling certain basic principles relevant to what are commonly termed the "outside activities" of officials of UNIDO. Article 11(4) of the Constitution of UNIDO provides, *inter alia*, that the Director-General and staff "shall refrain from any action that might reflect on their position as international officials *responsible only to the Organization*". In like vein, staff regulation 1.1 (which also applies to the Director-General) states that, by accepting appointment, staff "pledge themselves to discharge their functions and to regulate their conduct with *only the interests of the Organization in view*", while staff regulation 1.3 enjoins staff to avoid any action "which may adversely reflect on their status, or on the integrity, *independence and impartiality* which are required by that status" (emphasis added).

4. In my view, the above-quoted provisions indicate that the Director-General should decline the invitation to become a member of the Wise Persons Group and should not accept travel funds from the [organization]. While the [organization] and UNIDO may share some common ground, the [organization]'s objectives and interests will naturally differ from those of UNIDO and other United Nations agencies in areas such as renewable energy, climate change and the environment. Even if the Director-General would serve on the Wise Persons Group in a purely advisory capacity, the group remains a body established and funded by the [organization]. An actual or perceived conflict between the interests of UNIDO and those of the [organization] would almost certainly arise.

5. The [organization]'s letter mentions that the Chairman of the [organization] was previously a member of the Wise Persons Group. However, since the chairman of the [organization] is not an international civil servant, his situation cannot be compared to that of the executive head of a specialized agency and should therefore not be treated as a precedent.

6. It should be added that the Director-General does not necessarily have to be a member of the Wise Persons Group in order to provide the [organization] with his views on energy-related issues. An exchange of information and ideas can be achieved through other mechanisms. Depending on the circumstances, cooperation with NGOs can take various forms, including consultative status in UNIDO in accordance with General Conference decision GC.1/Dec.41, and working arrangements under article 19 of the Constitution. There would also be no objection to the Director-General's accepting a speaking engagement at an [organization] event.

7. In conclusion, my suggestion would be for the Director-General to thank the [organization] for its invitation and to explain that, while the rules of the Organization prevent him from becoming a member of the Wise Persons Group, he would be interested in exploring other appropriate avenues for cooperation on matters of mutual interest, including the possibility of a speaking engagement.

(*c*) Interoffice memorandum regarding recognition of Pacte Civil de Solidarité by UNIDO

Recognition of new forms of civil union—Change of personal status under national law—No definition of "marriage", "spouse" or "dependent spouse" in staff regulations—Pacte Civil de Solidarité certificate equivalent to marriage certificate

1. I refer to your e-mail of [date] to LEG concerning the above-mentioned subject. Attached to your e-mail was an interoffice memorandum from [Name], dated [. . .], and its attachments, i.e., a dependency status form for the year 2010, indicating a change in status from single to married, and a certificate issued by the [State] Consul-General in [city], attesting to the staff member's conclusion of a *Pacte Civil de Solidarité* in [city] on [date].

2. Your e-mail includes the text of a draft reply to [Name], who is a national of [State], by which UNIDO would recognize his change in marital status. You ask whether the draft reply gives rise to legal comments.

3. As [UNIDO Office] is aware, the possible recognition of new forms of civil union such as the PACS gives rise to certain policy and legal questions. These questions need to be addressed, from case to case, on the basis of the provisions of the staff regulations and rules

of UNIDO, as well as applicable national law, general principles of law (e.g., the principle of non-discrimination), case law, and best practice in the United Nations system.

4. We understand that the staff member's PACS has resulted in a change of personal status under national law. The question that arises is whether UNIDO can give effect to that change by recognizing him as married for the purposes of entitlements. In this regard, I note that the staff regulations and rules of UNIDO do not define "marriage" or "spouse", and that staff rule 106.15(a) defines "dependent spouse" in gender-neutral terms and without reference to the type of union at issue. The staff regulations and rules thus pose no barrier to recognition of the PACS in the present case.

5. There appears, therefore, to be no reason why UNIDO should not accept the staff member's PACS certificate as equivalent to a marriage certificate. This conclusion is consistent with recent jurisprudence of the International Labour Organization Administrative Tribunal on the matter (see Judgment No. 2860). Your proposed reply to the staff member consequently gives rise to no legal comments or concerns.

[. . .]

(*d*) External e-mail message regarding the Basic Cooperation Agreement between UNIDO and the Government of [State]

Definition of discovery in light of patent right on traditional knowledge—Objective of UNIDO's patent rights is to enable all member States to benefit from them—Language services—Liability of the Organization only in the case of gross negligence—Functional immunity of UNIDO and its officials

1. This is in reply to your e-mail of [date] to [Name], seeking clarification regarding certain provisions of the draft Basic Cooperation Agreement between UNIDO and the Government of [State].

2. Your first question concerns article IV (10), which provides as follows:

> "10. Patent rights, copyrights and other similar rights to any discoveries or work resulting from UNIDO assistance under this Agreement shall belong to UNIDO. Unless otherwise agreed by the Government and UNIDO in each case, however, the Government shall have the right to use any such discoveries or work within the country free of royalty or any charge of similar nature."

3. You ask what constitutes a discovery where traditional knowledge exists but is not patented, and how such cases are treated. In fact, to the best of my knowledge we have had no such case in UNIDO. The rights envisaged in this article include, for example, a patent in a new industrial product or application, or copyright in a report or document prepared for a project. The reason provision is made for such rights to belong to UNIDO is to enable all member States to benefit from them. The intention would not be to claim unfair ownership rights over traditional knowledge. I believe it would be possible to address particular concerns the Government may have in this regard when designing specific projects, all of which require Government approval.

4. The second article you mention is article VII (2)(b), which reads:

> "(b) Appropriate local secretarial and clerical help, interpreters, translators and related assistance;"

5. You ask into which languages interpretation or translation would be required, and whether an Anglophone country would be given a Spanish or French-speaking representative who would require interpretation on a day-to-day basis. As I understand it, the clause refers to interpreters and translators required for interpretation and translation from or into a local language. Since English is a working language of UNIDO, I am able to assure you that all our field staff are fluent in that language.

6. The third clause you seek clarification on is article XI(2), which provides:

> "2. Assistance under this Agreement being provided for the benefit of the Government and people of [State], the Government shall bear all risks of operations arising under this Agreement. It shall be responsible for dealing with claims, which may be brought by third parties against UNIDO, its officials, or other persons performing services on their behalf, and shall hold them harmless in respect of claims or liabilities arising from operations under this Agreement. The foregoing provision shall not apply where the Government and UNIDO have agreed that a claim or liability arises from the gross negligence or willful misconduct of the above-mentioned individuals."

7. You request examples of each of the situations referred to in this article. I should perhaps first mention that our experience here is limited as such claims do not often arise in practice. However, claims and liabilities could arise, for example, from damage to property (e.g., damage to rented premises caused by accident or act of God); injury to third parties (e.g., an accident involving a member of the public); or dispute with commercial companies (e.g., an alleged infringement of intellectual property rights).

8. While every precaution is taken to avoid disputes, claims and liabilities, they cannot be ruled out completely. Given that UNIDO and its officials enjoy functional immunity, article XI(2) aims to ensure that such claims and liabilities will be handled by the Government, except where the claim or liability in question is the result of gross negligence or willful misconduct. In those situations (i.e., where there is gross negligence or willful misconduct), the risk is borne by the Organization and/or the individual concerned.

9. You also ask why the paragraph refers to gross negligence rather than simply to negligence. The reason UNIDO does not accept liability for ordinary negligence under its Basic Cooperation Agreements is that this might expose the Organization to claims and liabilities which it is not equipped to handle and which would drain its resources. UNIDO nevertheless has comprehensive liability insurance, which covers damage or injury attributable to persons for whom UNIDO is responsible. Depending on the circumstances, such insurance may result in an appropriate settlement without involving the Government.

[. . .]

(*e*) Internal e-mail message regarding the Basic Cooperation Agreement between UNIDO and the Government of [State]

Obligation to notify UNIDO of the ratification of an agreement, regardless of the passage of time—Conclusion of the agreement is a condition for delivery of technical assistance by UNIDO

1. I refer to [Name]'s e-mail of [date] to my assistant concerning the above-mentioned subject. Attached to her e-mail was a letter from the [Ministry] of [State] dated [. . .].

The Ministry—in response to the Director-General's reminder letter of [date]—requests to know why they should ratify an Agreement that was concluded more than 20 years ago.

2. UNIDO Representative in [city] may inform the [Ministry] of [State] in writing that under article XIV of the Basic Cooperation Agreement of [date], the Government of [State] has an obligation to notify the ratification of the Agreement to UNIDO. The passage of time does not revoke this obligation. The conclusion of this Agreement has been a condition for delivery by UNIDO of technical assistance to [State]. In other words, the provision of technical assistance to a recipient country should be based on a sound legal basis. The General Conference of UNIDO gave a mandate to the Director-General of UNIDO on 12 December 1985 (GC.1/Dec.40) to conclude such Agreements with recipient countries.

3. I have copied below article XIV of the Agreement for your information.

4. Finally, I would note that, according to our Infobase, UNIDO has no recent or ongoing projects in [State], and no projects are in the pipeline. This might explain the purpose of the Ministry's letter.

Article XIV. General Provisions[*]

1. This Agreement shall be subject to ratification by the Government and shall come into force upon receipt by UNIDO of notification from the Government of its ratification. Pending such ratification, it shall be given provisional effect by the Parties. It shall continue in force until terminated under paragraph 3 below. Upon the entry into force of this Agreement, it shall supersede existing agreements concerning the provision of assistance to the Government out of UNIDO resources and concerning any UNIDO office in the country, and it shall apply to all assistance provided to the Government and to any UNIDO office established in the country under the provision of the Agreements now superseded.

2. This Agreement may be modified by written agreement between the Parties hereto. Any relevant matter for which no provision is made in this Agreement shall be settled by the Parties in keeping with the relevant resolutions and decisions of the appropriate organs of UNIDO. Each Party shall give full and sympathetic consideration to any proposal advanced by the other Party under this paragraph.

3. This Agreement may be terminated by either Party by written notice to the other and shall terminate sixty days after receipt of such notice.

4. The obligations assumed by the Parties under articles V (concerning project information) and IX (concerning the use of assistance) hereof shall survive the expiration or termination of this Agreement. The obligations assumed by the Government in any supplementary agreement concluded pursuant to article III, paragraph 2 (concerning support costs of the UNIDO Representative), under articles X (concerning privileges and immunities), XI (concerning facilities for implementation of UNIDO assistance) and XIII (concerning settlement of disputes) hereof shall survive the expiration or termination of this Agreement to the extent necessary to permit orderly withdrawal of personnel, funds and property of UNIDO and of any persons performing services on its behalf under this Agreement.

[*] Translation from the French language provided by the Secretariat.

(*f*) Internal e-mail message regarding an exchange of letters between UNIDO and [United Nations agency]

NATURE OF AN AGREEMENT NOT DETERMINED BY ITS TITLE BUT BY ITS CONTENT—AGREEMENT OR WORKING ARRANGEMENT IN THE FORM OF AN EXCHANGE OF LETTERS SUBJECT TO ARTICLE 19 OF UNIDO'S CONSTITUTION—NON-BINDING JOINT DECLARATION NOT SUBJECT TO ARTICLE 19 OF THE CONSTITUTION

1. I refer to your e-mail of [date] concerning the above-mentioned subject. You state that "from [your] reading and consultation with [UNIDO Office], [you] cannot see that we need to enter into a formal relationship agreement in order to have an exchange of letters between the Director-General of UNIDO and the Secretary-General of [United Nations agency] to which a programme of cooperation outlining 3 to 4 areas of potential joint projects would be attached from our side." You asked me if I agreed with your interpretation.

2. I wish to inform you that the nature of an agreement is not determined by its title, e.g., Exchange of Letters, but by its contents, i.e., the concrete rights and obligations that the parties assume. I cannot formulate any opinion on the nature of the cooperation agreement (the exchange of letters) without seeing and examining its contents.

3. I do not see any ambiguity in article 19 of the Constitution of UNIDO which may require an interpretation. If UNIDO intends to conclude an Agreement with [United Nations agency], a United Nations system organization, in the form of an exchange of letters identifying 3 to 4 areas of cooperation, then the exchange of letters falls within paragraph 1 (a) of article 19 of the Constitution. If UNIDO intends to conclude a working arrangement in the form of an exchange of letters regulating the activities of the two agencies concerning a specific joint project, such as a joint study or a technical assistance project in a recipient country, then the exchange of letters falls under article 19 (2) of the Constitution and as such requires compliance with article 19 (1) of the Constitution. The Secretariat may have skipped the Industrial Development Board approval step foreseen in article 19 (1) of the Constitution for a number of working arrangements in the past, but this practice is not supported by the Constitution.

4. If you want to merely record the intentions of the parties in certain areas, then you may prepare a non-binding joint declaration or a letter of intentions. For this document you do not need to follow the steps foreseen in article 19 of the Constitution.

5. In light of the above, it is advisable to conclude a Relationship Agreement with [United Nations agency], a United Nations system organization, and base the cooperation between the United Nations agencies on a firm legal basis from the beginning in accordance with article 19 of the Constitution.

(*g*) Interoffice memorandum regarding the interpretation of staff rule 109.05(b)

INTERPRETATION OF STAFF RULES AND REGULATIONS—APPLY THE MOST RATIONAL INTERPRETATION THAT FLOWS FROM THE PLAIN AND ORDINARY SENSE OF THE LANGUAGE USED IN CONTEXT, IN LIGHT OF OBJECT AND PURPOSE, LEGISLATIVE HISTORY AND RELEVANT

PRACTICE—THE FLIGHT CHOSEN MUST NORMALLY FOLLOW THE SHORTEST ROUTE AND BE THE LEAST COSTLY ON THAT ROUTE

1. This is with reference to your e-mail of [date] requesting my interpretation of the phrase "most direct and economical route" in staff rule 109.05(b), as well as to your follow-up e-mails of [dates] on the same subject, the last of which forwarded a table summarizing the relevant practices of other international organizations.

2. Staff rule 109.05 concerns the route, mode and standard of transportation to be used when traveling at the expense of the Organization. Paragraph (b) of staff rule 109.05 determines the route and mode of transportation. It reads:

> "(b) Travel shall be by *the most direct and economical route* and mode of transportation unless it is established to the satisfaction of the Director-General that the use of an alternate route or mode is in the best interests of the Organization." (Emphasis added)

3. I understand from your e-mail of [date] that when the mode of travel is by air, the most direct route is no longer necessarily the most economical. This has led to recent difficulties in applying the rule. You therefore ask whether, for the same standard of accommodation,

> "a) both of the above criteria (namely, 'direct' and 'economical') have the same weight and none of them has a priority over the other (which would imply that when the amount of the air fare is to be approved, the route and the price should be equally considered and the balanced solution found), or
>
> b) the 'most direct' prevails over 'economical' (which implies that the most direct route must be taken irrespectively of the price difference between the available comparable options, even in cases when the price difference between the options is very considerable)."

Interpretation of regulations and rules

4. Before explaining what, in our opinion, is the meaning of staff rule 109.05(b), it is necessary to say a few words on how we approach such interpretative questions. In accordance with general principles, we seek to give to regulations and rules the most rational interpretation that flows from the plain and ordinary sense of the language used in its context. If more than one interpretation is possible, or if a provision is otherwise ambiguous or obscure, regard may be had to the object and purpose of the provision, its legislative history and any relevant practice in implementing it. Since regulations and rules should provide certainty, interpretations that make for a certain result are preferred over uncertain ones. There is also a presumption that regulations and rules are intended to produce reasonable rather than unreasonable or absurd results.

Air travel by the most direct and economical route

5. To ascertain the correct meaning and effect of staff rule 109.05(b) one should begin with a careful parsing of the rule. Where the mode of transportation is by air, staff rule 109.05(b) requires that staff must travel by the "most direct and economical route" unless it is established that the use of an alternate route is in the best interests of the Organization. As used in the rule, the modifiers "most direct and economical" form an adjectival phrase

which describes the word "route". In other words, the route flown must be both the most direct and the most economical.

6. In ordinary usage, the expression "most direct" means "shortest" (in distance or time), while "most economical" means "least costly" or "most cost-effective". From your e-mails it would seem that these are the meanings which everyday practice at UNIDO attaches to the terms. The main issue, however, is not so much what each expression means individually but what they mean together as joint modifiers of the word "route".

7. The perceived difficulty, or even absurdity, in requiring an air route to be, simultaneously, the *most direct and economical* is, as already stated, that the most economical route in absolute terms might not be the most direct one. However, the conflict between these two requirements is more apparent than real. This is because the phrase *most direct and economical* is in fact capable of a rational and sensible construction which avoids any internal inconsistency or absurdity. Under this interpretation, *the flight selected must follow the shortest route and be the least costly on that route*.

8. We believe the above interpretation to be the correct and only reasonable interpretation of staff rule 109.05(b) as it applies to travel by air. The interpretation does not imply, as you have phrased it, that the criterion of directness "prevails" over economy. Rather, it allows the two criteria to be reconciled without necessarily assigning priority to either. Nor does it imply that "the route and the price should be equally considered and [a] balanced solution found", such a construction being problematical not least because of its inherent uncertainty and because the rule makes no provision for a "balanced solution".

9. The general rule regarding the route of travel is not absolute. Under staff rule 109.05(b), the most direct and economical route is to be taken *unless it is established to the satisfaction of the Director-General that the use of an alternate route or mode is in the best interests of the Organization*. The possibility of an alternate route might address situations where, for example, the most direct and economical route involves travel on an unsafe carrier, or where considerable financial savings can be achieved by using a slightly longer route. In the latter case, the alternate route should most likely not be significantly more onerous, i.e., should not be very much longer or entail additional stopovers, since it is presumably not in the Organization's best interest to cause undue hardship to its staff. It should be noted that exceptions to the most direct and economical route would constitute discretionary administrative decisions that may be appealed pursuant to chapter XII of the staff rules.

Conclusion

10. In summary, our main conclusions are:

(i) That the most reasonable interpretation of the requirement in staff rule 109.05(b) that air travel must be by the most direct and economical route is that the flight chosen must normally follow the shortest route and be the least costly on that route; and

(ii) That a route other than the most direct and economical route can be approved where it is in the best interests of the Organization to do so.

(*h*) Interoffice memorandum regarding the optimal modality for operating UNIDO Desks

No requirement to conclude a specific agreement to facilitate cooperation with the United Nations—Cooperation with other bodies does require a specific agreement

1. Reference is made to your e-mail of [date], which requested advice on the optimal modality to operate the UNIDO Desks under UNIDO's full authority and responsibility. In particular, it is asked whether the absence of a specific agreement with UNDP would constitute a legal impediment for the continued smooth operation of the UNIDO Desks. The short answer is No.

2. It appears that the basis for the query is the understanding that development of joint programmes with UNDP and other United Nations agencies has not been preconditioned on the existence of specific agreements between agencies. This understanding is correct, *but only in so far as the United Nations* (including its funds and programmes) is concerned.

3. Article 19 of the Constitution and the General Conference's Guidelines for the Relationship of UNIDO with Intergovernmental, Governmental, Non-Governmental and Other Organizations, Annex to GC.1/Dec.41 (12 December 1985), not only require cooperation with the *specialized agencies and other organizations of the United Nations system* but also that such cooperation "shall be based on agreements concluded separately with each of the agencies and organizations". See Guidelines, paragraph 1. Among other things, such agreements "shall provide a basis for[. . .] (b) Co-ordination and co-operation, including joint action, in the planning and implementation of technical assistance programmes, studies, research and other activities".[1] All such agreements with the specialized agencies and United Nations system organizations require the approval of the Industrial Development Board.

4. The above does not apply in the case of the United Nations. In the case of the United Nations (including its funds and programmes, which, despite enjoying a certain degree of autonomy, are subsidiary organs of the United Nations), the legal basis for cooperation derives from article 18 of the Constitution and the UNIDO-United Nations Relationship Agreement (17 December 1985), as well as the relevant provisions of the Charter of the United Nations. *Accordingly, there is no legal impediment that would prevent UNIDO from operating the UNIDO Desks without a specific agreement with UNDP.*

5. As it is known, the General Conference has requested the Director-General to conclude an appropriate operational and administrative arrangement with UNDP, consistent with the recommendations of the joint terminal evaluation of the implementation of the

[1] The Guidelines further require that agreements with the specialized agencies and other United Nations system organizations *shall* provide a basis for the exchange of information on on-going and planned activities; reciprocal representation in meetings of appropriate bodies; and minimizing duplication of activities or programmes. Pursuant to the Guidelines, relationship agreements have been concluded with FAO (4 May 1990), ILO (14 September 1987), UNESCO (5 June 1989), WHO (30 October 1989), IAEA (9 October 1987), and IFAD (5 June 1989).

Cooperation Agreement with UNDP.[2] The evaluation team recommended the conclusion of a memorandum of understanding with UNDP that defines operational and administrative arrangements at the country level, including provisions for UNIDO desks. Such a working arrangement with UNDP may be concluded by the Director-General without the formal approval of the Board.

[2] GC.13/Res.7 (11 December 2009) provides, in relevant part, as follows: "The General Conference . . . 4. Requests the Director-General: . . . (b) To conclude an appropriate operational and administrative arrangement with UNDP in 2010, consistent with the findings and recommendations of the joint terminal evaluation and taking into account the requirements of Member States. In this regard, particular attention should be placed on the review of the functioning of UNIDO desks established within UNDP premises and the role of UNIDO desks . . .".

Part Three

JUDICIAL DECISIONS ON QUESTIONS RELATING TO THE UNITED NATIONS AND RELATED INTERGOVERNMENTAL ORGANIZATIONS

Chapter VII

DECISIONS AND ADVISORY OPINIONS OF INTERNATIONAL TRIBUNALS

A. International Court of Justice[1]

The International Court of Justice is the principal judicial organ of the United Nations. It was established in June 1945 by the Charter of the United Nations and began work in April 1946.

On 12 May 2010, the President of the Court ordered that the case of *Certain Questions concerning Diplomatic Relations (Honduras* v. *Brazil)* be removed from the list of cases after noting that the Brazilian Government had not taken any step in the proceedings in the case. The Republic of Congo withdrew its application instituting proceedings in the case regarding *Certain Criminal Proceedings in France (Republic of the Congo* v. *France)* and the case was removed from the list of cases following an Order of 16 November 2010.

1. Judgments

(i) *Ahmadou Sadio Diallo (Republic of Guinea* v. *Democratic Republic of the Congo)*, Judgment, 30 November 2010.

(ii) *Pulp Mills on the River Uruguay (Argentina* v. *Uruguay)*, Judgment, 20 April 2010.

2. Advisory Opinions

(i) *Accordance with international law of the unilateral declaration of independence in respect of Kosovo (Request for Advisory Opinion)*, Advisory Opinion, 22 July 2010.

3. Pending cases and proceedings as at 31 December 2010

(i) *Certain Activities carried out by Nicaragua in the Border Area (Costa Rica* v. *Nicaragua)* (2010-).

(ii) *Frontier Dispute (Burkina Faso/Niger)* (2010-).

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[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. For more information about the Court's activities, see, for the period 1 August 2009 to 31 July 2010, Report of the International Court of Justice (A/65/4). At the time of publication, the report covering the period 1 August 2010 to 31 July 2011 was forthcoming.

(iii) *Whaling in the Antarctic (Australia* v. *Japan)* (2010-).

(iv) *Judgment No. 2867 of the Administrative Tribunal of the International Labour Organization upon a Complaint Filed against the International Fund for Agricultural Development (Request for Advisory Opinion)* (2010-).

(v) *Jurisdiction and Enforcement of Judgments in Civil and Commercial Matters (Belgium* v. *Switzerland)* (2009-).

(vi) *Questions relating to the Obligation to Prosecute or Extradite (Belgium* v. *Senegal)* (2009-).

(vii) *Jurisdictional Immunities of the State (Germany* v. *Italy)* (2008-).

(viii) *Application of the Interim Accord of 13 September 1995 (the former Yugoslav Republic of Macedonia* v. *Greece)* (2008-).

(ix) *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia* v. *Russia)* (2008-).

(x) *Aerial Herbicide Spraying (Ecuador* v. *Colombia)* (2008-)

(xi) *Maritime Dispute (Peru* v. *Chile)* (2008-).

(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-).

(xvi) *Gabčíkovo-Nagymaros Project (Hungary/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, established a mechanism for cooperation between the two institutions.

1. Judgments

No judgments were delivered by the Tribunal in 2010.

[2] For more information about the Tribunal's activities, including relating to orders rendered in 2010, see the Annual report of the International Tribunal for the Law of the Sea for 2010 (SPLOS/222) 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 and proceedings as at 31 December 2010

(i) *Case No. 18—The M/V "Louisa" Case (Saint Vincent and the Grenadines* v. *Spain)* (2010-).

(ii) *Case No. 17—Responsibilities and obligations of States sponsoring persons and entities with respect to activities in the Area (Request for Advisory Opinion submitted to the Seabed Disputes Chamber)* (2010-).

(iii) *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 Relationship Agreement between the International Criminal Court and the United Nations, 2004,[7] outlines the relationship between the two institutions.

The Secretary-General of the United Nations, in his capacity as depositary of the Rome Statute of the International Criminal Court, convened a Review Conference of the Rome Statute from 31 May to 11 June 2010 in Kampala, Uganda. At the Review Conference, States parties reviewed and amended the Rome Statute, conducted a stocktaking of international criminal justice and adopted declarations and resolutions on a wide range of issues.[8]

As of 2010, the Court was investigating five situations. 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 situation in Darfur, the Sudan, which is a non-State party, was referred to the Court by the United Nations Security Council. After a thorough analysis of available information, the Prosecutor had opened and is conducting investigations in all of the above-mentioned situations. The situation in the Republic of Kenya was brought before the Court by the Office of the Prosecutor, acting under article 15 of the Rome Statute, which received information about crimes committed in Kenya in relation to the post-election violence of 2007–2008. In 2009, the Prosecutor was authorized to initiate an investigation into the situation in Kenya in relation to crimes against humanity allegedly committed between 1 June 2005 and 26 November 2009. In late 2010, the Prosecutor submitted two applications under article 58 of the Rome Statute to Pre-Trial Chamber II, requesting the issuance of summonses to appear to six individuals. Furthermore, the Office of the Prosecutor

[5] For more information about the Court's activities, see Report of the International Criminal Court, for the period 1 August 2009 to 31 July 2010 (A/65/313). At the time of publication, the report covering the period 1 August 2010 to 31 July 2011 was forthcoming. See also the Court's website at http://www.icc-cpi.int.

[6] United Nations, *Treaty Series*, vol. 2187, p. 3.

[7] *Ibid*., vol. 2283, p. 195.

[8] For more information about the 2010 Review Conference of the Rome Statute, see the conference website at http://www.icc-cpi.int/Menus/ASP/ReviewConference.

is conducting preliminary examinations in various situations, including in Afghanistan, Colombia, Côte d'Ivoire, Georgia, Guinea and Palestine.

1. Situations under investigation in 2010

(*a*) Situation in the Democratic Republic of the Congo

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) were ongoing in 2010. On 8 July 2010, Trial Chamber I ordered to stay the proceedings in the case against Thomas Lubanga Dyilo, considering that the fair trial of the accused was no longer possible because the Prosecution had failed to implement the Chamber's orders. Following the decision to stay the proceedings, Trial Chamber I ordered, on 15 July 2010, the release of the accused. The Prosecutor submitted two appeals against these decisions. On 8 October 2010, the Appeals Chamber reversed the decisions of Trial Chamber I to stay proceedings and to release the accused. In accordance with this decision, Thomas Lubanga Dyilo will remain in the custody of the Court during the trial proceedings, which were resumed.

An arrest warrant was issued under seals by the judges of the Court on 28 September 2010 in the case *The Prosecutor* v. *Callixte Mbarushimana* (ICC-01/04–01/10) and the suspect was arrested by the French authorities on 11 October 2010.

The suspect in the case *The Prosecutor* v. *Bosco Ntaganda* (ICC-01/04–02/06) remained at large throughout 2010.

(*b*) Situation in the Central African Republic

On 24 June, 2010, Trial Chamber III dismissed the admissibility and abuse of process challenges, raised by the Defence in the case *The Prosecutor* v. *Jean-Pierre Bemba Gombo* (ICC-01/05–01/08). The latter filed an appeal against this decision on 28 June 2010. On 19 October 2010, the Appeals Chamber confirmed the decision of Trial Chamber III entitled "Decision on the Admissibility and Abuse of Process Challenges" and dismissed Mr. Jean-Pierre Bemba Gombo's appeal against this decision. This judgment confirmed that the case against Mr. Bemba is admissible and the trial commenced on 22 November 2010.

(*c*) Situation in Uganda

The four suspects in the case *The Prosecutor* v. *Joseph Kony, Vincent Otti, Okot Odhiambo and Dominic Ongwen* (ICC-02/04–01/05) remained at large throughout 2010.

(*d*) Situation in Darfur, the 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 2010.

On 12 July 2010, Pre-Trial Chamber I issued a second 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 2010.

On 15 June 2010, summonses to appear before Pre-Trial Chamber I were unsealed in the case *The Prosecutor* v. *Abdallah Banda Abakaer Nourain and Saleh Mohammed Jerbo Jamus* (ICC-02/05–03/09) and the suspects made their initial appearances on 17 June 2010.

On 8 February 2010, Pre-Trial Chamber I refused to confirm the charges against the suspect in the case *The Prosecutor* v. *Bahar Idriss Abu Garda* (ICC-02/05–02/09) due to insufficient evidence. On 23 April 2010, Pre-Trial Chamber I issued a decision rejecting the Prosecutor's application to appeal the decision declining to confirm the charges.

(*e*) Situation in Kenya

On 31 March 2010, Pre-Trial Chamber II authorized the Prosecutor to commence an investigation covering alleged crimes against humanity committed between 1 June 2005 and 26 November 2009. On 15 December 2010, the Prosecutor submitted to Pre-Trial Chamber II two applications under article 58 of the Rome Statute requesting the issuance of summonses to appear for William Samoei Ruto, Henry Kiprono Kosgey, Joshua Arap Sang (case one) and Francis Kirimi Muthaura, Uhuru Muigai Kenyatta and Mohamed Hussein Ali (case two) for their alleged responsibility in the commission of crimes against humanity.

2. Judgments

No judgments were delivered by the Trial Chambers or Appeals Chamber in 2010.

D. International Tribunal for the former Yugoslavia[9]

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.[10] The Tribunal has commenced all trials, and there are no more accused at the pretrial stage. However, two accused, Ratko Mladić and Goran Hadžić, are still at large.

[9] 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 2009 to 31 July 2010, 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/65/205–S/2010/413). At the time of publication, the report covering the period 1 August 2010 to 31 July 2011 was forthcoming.

[10] 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).

1. Judgements delivered by the Appeals Chamber

(i) *Prosecutor* v. *Veselin Šljivančanin*, Case No. IT-95–13/1 -R.1, Review Judgement, 8 December 2010.

(ii) *Prosecutor* v. *Haradinaj et al.*, Case No. IT-04–84-A, Judgement, 21 July 2010.

(iii) *Prosecutor* v. *Rasim Delić*, Case No. IT-04–83-A, Judgement, 29 June 2010. Following the death of Rasim Delić on 16 April 2010, the Appeals Chamber formally terminated the appeal proceedings in the case and declared the trial judgement to be final.

(iv) *Prosecutor* v. *Boškoski & Tarčulovski*, Case No. IT-04–82-A, Judgement, 19 May 2010.

(v) *Prosecutor* v. *Vojislav Šešelj*, Case No. IT-03–67-R77.2 and IT-03–67-R77.3, Judgement on Allegations of Contempt, 19 May 2010.

2. Judgements delivered by the Trial Chambers

(i) *Prosecutor* v. *Popović et al.*, Case No. IT-05–88-T, Judgement, 10 June 2010.

(ii) *Prosecutor* v. Zuhdija Tabaković, Case No. IT-98–32/1-R77.1, Judgement on Allegations of Contempt, 15 March 2010.

E. International Criminal Tribunal for Rwanda[11]

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.[12]

In July of 2010, the accused in an ongoing trial passed away (*The Prosecutor* v. *Joseph Nzirorera*, Case No. ICTR-98–38). Jean-Bosco Uwinkindi, who is facing charges before the Tribunal, was arrested on 30 June 2010 in Kampala, Uganda. On 2 July 2010 he was transferred to the United Nations Detention Facility in Arusha.

1. Judgements delivered by the Appeals Chamber

(i) *Emmanuel Rukundo* v. *the Prosecutor*, Case No. ICTR-01–70-A, Judgement, 20 October 2010.

[11] 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 2009 to 30 June 2010, 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/65/188-S/2010/408). At the time of publication, the report covering the period 1 July 2010 to 30 June 2011 was forthcoming.

[12] The Statute of the Tribunal is contained in the annex to the resolution.

(ii) *Callixte Kalimanzira* v. *the Prosecutor*, Case No. ICTR-05–88-A, Judgement, 20 October 2010.

(iii) *Siméon Nchamihigo* v. *the Prosecutor*, Case No. ICTR-01–63-A, Judgement 18 March 2010.

(iv) *Simon Bikindi* v. *the Prosecutor*, Case No. ICTR-01–72-A, Judgement, 18 March 2010.

(v) *Léonidas Nshogoza* v. *the Prosecutor*, Case No. ICTR-2007–91-A, Judgement, 15 March 2010.

2. Judgements delivered by the Trial Chambers

(i) *The Prosecutor* v. *Idelphonse Hategekimana*, Case No. ICTR-00–55b-T, Judgement, 6 December 2010.

(ii) *The Prosecutor* v. *Gaspard Kanyarukiga*, Case No. ICTR-02–78-T, Judgement, 1 November 2010.

(iii) *The Prosecutor* v. *Dominique Ntawukulilyayo*, Case No. ICTR-05–82-T, Judgement, 3 August 2010.

(iv) *The Prosecutor* v. *Yussuf Munyakazi*, Case No. ICTR-97–36A-T, Judgement, 5 July 2010.

(v) *The Prosecutor* v. *Ephrem Setako*, Case No. ICTR-04–81-T, Judgement, 25 February 2010.

(vi) *The Prosecutor* v. *Tharcisse Muvunyi*, Case No. ICTR-00–55A-T (Retrial), Judgement, 11 February 2010.

F. Special Court for Sierra Leone[13]

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.[14]

1. Judgements

No judgments were delivered by the Trial Chambers or the Appeals Chamber of the Special Court for Sierra Leone in 2010.

[13] 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 2009 to May 2010, the Seventh Annual Report of the President of the Special Court. At the time of publication, the Eighth Annual Report, covering the period June 2010 to May 2011, was forthcoming.

[14] United Nations, *Treaty Series,* vol. 2178, p. 137.

G. Extraordinary Chambers in the Courts of Cambodia[15]

The Agreement between the United Nations and the Royal Government of Cambodia concerning the Prosecution under Cambodian Law of Crimes Committed during the period of Democratic Kampuchea, signed in Phnom Penh on 6 June 2003,[16] entered into force on 29 April 2005 and established the Extraordinary Chambers in the Courts of Cambodia to prosecute the crimes committed during the period of Democratic Kampuchea.

1. Judgments delivered by the Supreme Court Chamber

No judgments were delivered by the Supreme Court Chamber of the Extraordinary Chambers in the Courts of Cambodia in 2010.

2. Judgments delivered by the Trial Chamber

(i) *Kaing Guek Eav "Duch"*, Case No. 001/18–07–2007-ECCC/TC, Judgment, 26 July 2010.

H. Special Tribunal for Lebanon[17]

The Special Tribunal for Lebanon was established in 2007 pursuant the Agreement between the United Nations and the Lebanese Republic on the establishment of a Special Tribunal for Lebanon, dated 22 January and 6 February 2007, and Security Council resolution 1757 (2007) of 30 May 2007.

On 15 January 2010, the President issued three Practice Directions on the Filing of Documents, on Depositions and Taking Witness Statements for use in Court, and on Video-Conference Links. In addition, one internal Standard Operating Procedure for the Registry on Holding Proceedings Away From the Seat of the Tribunal was adopted.

The Judges of the Special Tribunal met in a plenary session from 8 to 11 November 2010 to consider, among other issues, proposed amendments to the Rules of Procedure and Evidence. The Judges adopted a number of rule changes to enhance the efficiency, effectiveness and integrity of the Tribunal's proceedings.

1. Judgments

No judgments were delivered by the Trial Chamber or the Appeals Chamber of the Special Tribunal in 2010.

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[15] The texts of the decisions of the Extraordinary Chambers in the Courts of Cambodia are available on its website, http://www.eccc.gov.kh. For more information on the Court's activities, see the Yearly Financial and Activity Progress Report as at 31 December 2010 (forthcoming at the time of publication).

[16] United Nations, *Treaty Series*, vol. 2329, p. 117.

[17] For more information about the activities of the Special Tribunal, see the Tribunal's website at http://www.stl-tsl.org, the First Annual Report (2009–2010) covering the period 1 March to 28 February 2010 and the Second Annual Report covering the period 1 March 2010 to 28 February 2011.

Chapter VIII

DECISIONS OF NATIONAL TRIBUNALS

[No decision or advisory opinion from national tribunals on questions relating to the United Nations and related intergovernmental organizations to be reported for 2010.]

Part Four

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